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BILL ANALYSIS



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Senate Bills 299 and 300 (as introduced 4-27-23)

Sponsor: Senator Sam Singh

Committee: Natural Resources and Agriculture

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INTRODUCTION

The bills would authorize the Department of Environment, Great Lakes, and Energy (EGLE) and EGLE-approved local health departments to regulate onsite wastewater treatment systems, including conventional and alternative systems. They would prescribe the requirements a local health department would have to meet to be approved to regulate the systems. Regulations would include permitting and inspection processes for systems, as well as the process to become a registered inspector. Beginning January 1, 2026, systems would have to be inspected every five years and an inspector would have to complete certain reports upon inspection. Also, the bills would require proprietary products to be registered by January 1, 2026, and prescribe the application process and fee for review of a product. The bills would create the Technical Advisory Committee to advise EGLE on standards for systems and products. In consultation with the Committee, EGLE would have to create a Statewide Code for onsite wastewater systems that included certain baseline protections for public health and the environment, within three years of the bills taking effect.

The bills would prescribe a civil fine of up to \$1,000 for noncompliance with regulations. They also would prescribe a misdemeanor penalty for knowingly submitting false information related to an onsite wastewater treatment system. Finally, they would create the Onsite Wastewater Treatment System Administration Fund and specify the purposes for which EGLE could spend money from the Fund upon appropriation, including for grants to local health departments and individuals under the Federal poverty line to comply the bills' regulations.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

BRIEF FISCAL IMPACT

The bills would have a significant negative fiscal impact on EGLE and an indeterminate negative fiscal impact on local units of government. The regulation of onsite wastewater treatment would involve additional administrative expenses of unknown magnitude for EGLE. Fines and fees imposed under the bills would partially offset these expenditures but are not expected to fully offset the costs to implement and administer the bills, meaning that the bills likely would require additional appropriations.

MCL 333.12752 et al. (S.B. 299)
Proposed MCL 333.12815 et al. (S.B. 300)

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CONTENT

Senate Bill 299 would amend the Public Health Code to do the following:

- **Add Part 128 (Onsite Wastewater Treatment Systems) to the Code and grant EGLE and local health departments the authority to regulate such systems.**
- **Establish criteria that a local health department would have to meet to assume regulatory authority, including the adoption of regulations that complied with the Code and provided protection for the public health and environment.**
- **Require local health departments to create a conventional onsite wastewater treatment system program to administer Part 128 and prescribe requirements for programs' staff.**
- **Allow existing local health department regulations and guidance for alternative systems to remain in effect until EGLE produced new recommended standards for alternative systems.**
- **Require a person to obtain from EGLE or a local health department a construction permit before installing, constructing, altering, or repairing an onsite wastewater treatment system.**
- **Prohibit a local unit of government from issuing a building permit for a residence or facility that would be served by an onsite wastewater treatment system that that did not obtain a construction permit for that system.**
- **Beginning January 1, 2026, require a proprietary product to be registered for use and a construction permit to be obtained before a person could install, construct, alter, or repair a proprietary product.**
- **Prescribe the process to apply for and register a proprietary product.**
- **Allow EGLE to charge a fee of \$3,000 to cover application and reviewal costs of proprietary products and require the fee to be deposited into the Onsite Wastewater Treatment System Fund created under Senate Bill 300.**
- **Prescribe a misdemeanor punishable by up to \$10,000 or up to one years' imprisonment, or both, for each violation of Part 128.**
- **Beginning on the bill's effective date, require alternative systems and onsite wastewater systems to be inspected every five years and specify additional conditions that would trigger the inspection of an onsite wastewater system.**
- **Prescribe the requirements of an inspection under Part 128.**
- **Beginning January 1, 2026, require inspections to be done by EGLE, a local health department, or a registered inspector and prescribe the requirements an individual would have to meet to be a registered inspector.**
- **Require inspectors to complete and submit a copy of an inspection report to the owner of the onsite wastewater treatment system and the applicable local health department or EGLE within 21 days of that inspection.**
- **Require EGLE to develop and make available inspection report forms and an online database for recording and tracking the results of inspections.**
- **Prescribe a civil fine of up to \$1,000 for each 30-day period an onsite wastewater system was in failure.**
- **Require certain fees to cover inspection and inspector registration costs to be forwarded to the State Treasurer for deposit into the Fund.**
- **Prohibit a local unit of government from adopting a point-of-sale ordinance related to onsite wastewater treatment and require local units of government with existing point-of-sale ordinances to phase out the ordinances.**

Senate Bill 300 would amend the Code to do the following:

- **Create a Technical Advisory Committee to advise EGLE on standards for onsite wastewater systems, proprietary and nonproprietary products, alternative systems, and inspections, among other things.**
- **Prescribe the Committee's considerations in its advice to EGLE.**
- **Prescribe the membership and duties of the Committee.**
- **Within three years of the bill's effective date, require EGLE, in consultation with the Committee, to create rules that established a Statewide Code for onsite wastewater systems that included certain baseline protections for public health and the environment.**
- **Require the Statewide Code to include rules allowing the continued use of an approved onsite wastewater system in which a construction permit was issued before the bill took effect.**
- **Create the Onsite Wastewater Treatment System Administration Fund within the Department of Treasury.**
- **Specify the purposes for which EGLE could spend money from the Fund upon appropriation, including for grants to local health departments and individuals under the Federal poverty line to comply with Part 128.**

Senate Bill 299

Protection of Public Health through Legislative Determination

Generally, the Code specifies that public sanitary systems are essential to the health safety and welfare of the people of the State. *Septic tank disposal systems* are subject to failure due to soil conditions, or other reasons. Failure of the systems poses a threat to the public health due to a potential for disease, blight, and mortality, among other things. The connection to available public sanitary sewer systems for the protection of public health is necessary in the public interest and is declared a matter of legislative determination. The bill would modify this provision to replace septic tank disposal systems with *onsite wastewater treatment systems*.

"Onsite wastewater system" would mean a system of components and appurtenances used to collect and treat sanitary sewage or domestic equivalent wastewater from at least one dwelling, building, or structure and discharge up to 10,000 gallons per day of the resulting effluent to a soil dispersal system on property owned by or under the control of the owner of the system. "Domestic equivalent wastewater" would mean wastewater that is not sanitary sewage but is demonstrated to have similar wastewater characteristics and flow and is amenable to onsite wastewater treatment and soil dispersal through a conventional or alternative system. "Conventional system" would mean an onsite water treatment system that contains a watertight septic tank with nonuniform distribution of effluent to a soil dispersal system that does not include any components of an approved alternative technology. "Alternative system" would mean an onsite wastewater treatment system that is not a conventional system and that provides for an equivalent or better degree of protection for public health and the environment than a conventional system.

"Sanitary sewage" would mean water and contaminants discharged from sanitary conveniences, including bathroom, kitchen, and household laundry fixtures of dwellings, office buildings, industrial plants, commercial buildings, and institutions.

"Failure" would mean a malfunction or failure of an onsite wastewater treatment system consisting of any of the following:

- A discharge of sanitary sewage to the surface of the ground.
- A discharge of sanitary sewage or effluent into surface water or directly into groundwater.
- The inability of the onsite wastewater treatment system to accept sanitary sewage at the rate being discharged, resulting in the backup of sanitary sewage into the structure.
- A structural failure or leaking of the septic tank or other associated components and appurtenances.
- A discharge of treated wastewater that does not comply with applicable standards.
- An illicit connection or illicit discharge.
- Evidence of effluent within the septic tank above or below the invert of the septic tank outlet.
- The location of all or a portion of a conventional or alternative system outside of the established boundaries of the property of the structure that the system serves.
- The treatment bed or treatment mound has collapsed or compacted and rain and snow melt cannot percolate through the system.

"Illicit connection" would mean a physical connection to an onsite wastewater treatment system or other separate drainage system in violation of law.

"Illicit discharge" would mean any discharge from an onsite wastewater treatment system or other separate drainage system in violation of law.

The bill would specify that onsite wastewater systems would be subject to regulation as provided below and would allow local health departments to implement and enforce the proposed regulations described below.

Administration of Part 128

The bill would allow EGLE to enter into agreements, contracts, or cooperative arrangements with appropriate authorized local health departments or other persons for the purpose of administering Part 128. To the extent a local health department were not authorized to administer Part 128, EGLE would have to administer the Part. To implement Part 128, EGLE could contract with another authorized local health department or other qualified person.

Also, EGLE, under Part 41 (Wastewater Construction Permits) of the Natural Resources and Environmental Protection Act (NREPA) and the Public Health Code, and local health departments under the Code, would have exclusive jurisdiction over the regulation, permitting, and inspection of onsite wastewater treatment systems.

Conventional System Local Regulation

Generally, the bill would create Part 128 to require EGLE to authorize a local health department to administer the bill's provisions for conventional systems if the local health department adopted regulations consistent with Part 128 for the purpose of carrying out Part 128 and the Statewide Code proposed under Senate Bill 300, including the authority to do all the following:

- Conduct site evaluations, issue construction permits, and perform interim inspections during the construction and final inspections on completion of construction, if required.
- Issue notices and penalties to individuals that violate Part 128 or endanger public health or the environment.
- Respond to the complaints of failure of an onsite wastewater system.
- Provide an administrative review for any person affected by an order, decision, or notice issued by the local health department, and upon request, provide the results of that review to EGLE.

Additionally, a local health department would have to adopt local health department regulations that, at a minimum, provide protection for public health and the environment equivalent to Part 128 and submit its regulations to EGLE for review and approval.

Finally, to be authorized by EGLE to administer Part 128 for a conventional system, a local health department would have to maintain qualified staff to administer a conventional onsite wastewater treatment system program. A staff member would have to meet the following minimum educational and training requirements to work independently in an onsite wastewater treatment system program:

- Possess a minimum of a four-year bachelor of science or arts degree with a major in environmental health, chemistry, biology, geology, engineering, or an equivalent degree.
- Obtain a minimum of eight hours of training that included a minimum of four hours of field training on the United States Department of Agriculture soil classification system from EGLE or another entity approved by the EGLE.
- Demonstrate competency and understanding of local sanitary regulations, criteria for subsurface sewage disposal provided in State law and rules, and the Land Division Act.¹
- Demonstrate competency and understanding of the Michigan Local Public Health Accreditation Program, accreditation indicators, and all minimum program requirements pertaining to onsite wastewater treatment systems.²
- Conduct a minimum of 10 supervised field evaluations of onsite wastewater system designs and 10 supervised final inspections with senior staff or a supervisor.
- Conduct a minimum of five solo field evaluations of onsite wastewater system designs and five solo final inspections demonstrating understanding of the onsite wastewater treatment program as determined by senior staff or a supervisor.
- Attend and observe a minimum of two complete onsite wastewater system installation from beginning to end.

Alternative System Regulations

Under the bill, EGLE would have to authorize a local health department to administer Part 128 for alternative systems if the local health department met the requirements to be authorized to regulate a conventional system described above and adopted regulations consistent with Part 128 for the purpose of carrying out the responsibilities of Part 128, including authority to do all the following:

- Review, evaluate, approve, or reject applications, plans, and specifications to alter, install, repair, or replace alternative systems.
- Issue construction permits authorizing the installation of alternative systems consistent with the bill's provisions.
- Ensure long-term maintenance of alternative systems through the issuance of operating permits.

"Operating permit" would mean a renewable and revocable permit, if required, to operate and maintain an alternative system in compliance with specific operational or performance requirements.

¹ The Land Division Act regulates the division of land for public health, safety, and general welfare regarding buildings and improvements, among other things.

² The Michigan Local Public Health Accreditation Program is administered by the Department of Health and Human Services' Local Health Services Division to create and promote public health standards for local public health departments and provide accreditation for departments meeting those standards.

The bill would specify that existing local health department regulations or guidance for a particular type of alternative system would remain in effect until recommended standards and guidance for that type of system were developed by EGLE as described below.

General Departmental Guidance for Permitting

The Department would have to develop recommended standards and guidance to assist local health departments in permitting different types of onsite wastewater treatment systems, including the following three categories:

- Nonproprietary technologies such as sand filters.
- Proprietary products such as aerobic treatment systems and packed bed filters.
- Proprietary products such as subsurface dripline products or gravelless distribution products.

"Nonproprietary technology" would mean a wastewater treatment or distribution technology, method, or product not subject to a patent or trademark that significantly contributes to the attainment of the treatment or dispersal objectives.

"Proprietary product" would mean a treatment or distribution product held under patent or trademark that significantly contributes to the treatment, performance, and attainment of effluent quality or dispersal objectives.

Construction Permitting Prerequisites

Under the bill, a person could not install, construct, alter, or repair an onsite wastewater treatment system unless the person received a construction permit from an authorized local health department or EGLE, subject to any permit required under Part 31 (Water Resources Protection) or Part 41 (Wastewater Construction Permits) of NREPA.

"Authorized local health department" would mean a local health department authorized by EGLE to administer Part 128 for conventional or alternative systems, as applicable.

A person would have to obtain a construction permit for an onsite wastewater treatment system from an authorized local health department in compliance with Part 128. The Department would be responsible for issuing construction permits if the local health department with jurisdiction over the property were not authorized.

A local unit of government could not issue a building permit for a residence or facility that would be served by an onsite wastewater treatment system unless a construction permit for the onsite wastewater treatment system had been obtained.

Under the bill, EGLE or an authorized health local health department that administered an alternative system construction and operating permitting program within its jurisdiction would have to issue a construction permit for the installation of an alternative system if the following conditions were met:

- The alternative system used a proprietary product that had been registered for use by EGLE or used a nonproprietary technology in accordance with the recommended standards and guidance provided by EGLE in accordance with the Statewide Code proposed under Senate Bill 300.
- The soils, site conditions, and operating conditions at the location were appropriate for the use of the alternative system in compliance with the Statewide Code.

Proprietary Product Registration

Beginning January 1, 2026, a person could not install, construct, alter, or repair a proprietary product unless that product had been registered for use in the State by EGLE and a construction permit was obtained.

A person could apply for registration of a proprietary product by submitting an application on a form and in a manner prescribed by EGLE. The bill would allow EGLE to charge a fee of \$3,000 to cover its costs in reviewing applications for registration. Money received by EGLE would have to be forwarded to the State Treasurer for deposit into the Onsite Wastewater Treatment System Fund created under Senate Bill 300.

Within 30 days of receipt of an application and fee, EGLE would have to review the application and determine whether it was administratively complete. Within 60 days of receipt of an administratively complete application, EGLE would have to approve or deny the registration and notify the applicant in writing. In approving and registering for use a proprietary product in the State, EGLE would have to consider the recommended standards and guidance provided to EGLE by the Technical Advisory Committee created under Senate Bill 300. Registration of a proprietary product would be valid for five years. A registration could be renewed; however, there could not be a fee for a renewal.

The bill would allow EGLE to deny, suspend, or revoke a registration following a contested case hearing pursuant to the Administrative Procedures Act if EGLE found any of the following:

- The registration was obtained or attempted to be obtained through misrepresentation or fraud.
- The registrant transacted business under its registration using fraudulent, coercive, or dishonest practices.
- The applicant or registrant failed to pay the required registration application review fees.
- Field reviews determined that the proprietary product did not function or perform as designed.

Inspections

Beginning on the bill's effective date, an alternative system would have to be inspected by EGLE, an authorized local health department, or a registered inspector described under Registered Inspector Qualifications at least once every five years unless otherwise provided in the Statewide Code.

Also, beginning on the bill's effective date, the owner of an onsite wastewater treatment system would have to arrange for an onsite wastewater treatment system inspection to be conducted in accordance with the provisions described below at least once every five years or if any of the following occurred:

- A complaint was filed with the local health department or EGLE based on a suspected failure of the system and the local health department or the EGLE determined that there was reasonable cause to require an inspection to be conducted.
- A change in use was proposed that increased use of an existing onsite wastewater treatment system.
- The owner of the property on which a system was located applied for a building permit for construction of a structure or an addition to a structure.

An onsite wastewater treatment system inspection would have to be conducted by EGLE, an authorized local health department, or a registered inspector. The owner of the system could

have the septic tank pumped out within 30 days before an onsite wastewater treatment system inspection was conducted. The individual conducting the onsite wastewater treatment system inspection would have to do all the following:

- Identify the size and condition of the septic tank or tanks.
- Before conducting any pumping, document the level of effluent in the septic tank or tanks.
- Pump out the septic tank or tanks, unless the owner of the system had the septic tank or tanks pumped out before the onsite wastewater treatment system inspection.
- Verify that all sanitary sewage-related plumbing fixtures are connected to the septic tank or tanks.
- Locate, expose, open, and inspect the septic tank or tanks and pumping chambers associated with the system.
- Inspect the enhanced treatment unit that existed as part of an alternative system, if applicable.
- Locate, determine the size of, and observe the subsurface dispersal system to determine its condition.
- Observe the general area, including the treatment and dispersal system for evidence of system failure or other factors that could influence proper operation.
- Inspect for an illicit discharge to the surface of the ground, surface water, or drain.
- Document evidence of a failure of the onsite wastewater treatment system and whether the failure was causing an imminent danger.
- Prepare an inspection report of the information gathered above.

"Imminent danger" would mean a condition or practice that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided under the Code.

Inspection Report and Noncompliance

Within 21 days after the onsite wastewater treatment system inspection was completed, the individual conducting the inspection would have to prepare an inspection report that detailed the findings of the onsite wastewater treatment system inspection and provide a written or electronic copy of the report to the owner of the onsite wastewater treatment system and to the authorized local health department or EGLE. The bill would require EGLE to develop and make available onsite wastewater treatment system inspection report forms for use in documenting the results of onsite wastewater treatment system inspections.

Also, EGLE would have to make available and maintain an onsite wastewater treatment system electronic database for recording and tracking the results of inspections. Upon availability of the database system, EGLE could require the person conducting the onsite wastewater treatment system inspection to electronically enter the report information into the database in lieu of the written report. The database could not include personal information related to the owner of an onsite wastewater treatment system.

If an inspection report identified the need for the tank or tanks to be pumped, the owner of the onsite wastewater treatment system would have to have the system pumped by a septage waste hauler licensed under Part 117 (Septage and Wastewater Servicers) of NREPA, within 30 days of receipt of the inspection report.

If an inspection report identified evidence of failure causing an imminent public health hazard, the owner of the onsite wastewater treatment system would have to remedy the failure within six months after receipt of the inspection report and as directed by the authorized local health department or EGLE. An owner that did not remedy the failure within the applicable period

would be subject to a civil fine of not more than \$1,000 for each 30-day period that the onsite wastewater treatment system remained in failure. The prosecutor of the county in which the violation occurred or the Attorney General could bring an action to collect the fine.

An onsite wastewater system inspection would be valid for a five-year period as long as there was no change to the use of the onsite wastewater treatment system or a failure of the system during that period.

The authorized local health department of EGLE would have to charge a reasonable fee not exceeding the costs of conducting an onsite wastewater treatment system inspection. In addition to the fee charged for conducting an inspection, EGLE, an authorized local health department, or a registered inspector, as applicable, would have to charge an additional \$25 State administrative fee. State administrative fees would have to be forwarded to EGLE on an annual basis by October 1 of every year. The bill would require EGLE to forward all fees received to the State Treasurer for deposit into the Onsite Wastewater Treatment System Administration Fund created under Senate Bill 300.

Registered Inspector Qualifications

Beginning January 1, 2026, an onsite wastewater treatment system inspection would have to be conducted only by EGLE, a registered inspector, or qualified local health department staff. To qualify as a registered inspector or to conduct an onsite wastewater treatment system inspection, an individual would have to meet the educational and training requirements established in the Statewide Code proposed under Senate Bill 300.

Subject to the provision described below, to apply to become a registered inspector, an individual would have to submit an application on a form and in a manner prescribed by EGLE. The bill would allow EGLE to charge a \$180 application fee to cover EGLE's costs. An application fee would have to be forwarded to the State Treasurer for deposit into the Onsite Wastewater Treatment System Fund.

If an organization or authorized local health department had a program to qualify inspectors of onsite wastewater treatment systems, EGLE could, upon review of the program, approve the program and accept those inspectors as meeting the registration requirements. An individual registered by EGLE through a program would have to thereafter meet EGLE requirements as specified in the Statewide Code and pay the application fee.

The bill would require EGLE to review the registrations once every three years and renew a registration for any individual who continued to meet the requirements.

A registration could be denied, suspended, or revoked following a contested case hearing as provided in the Administrative Procedures Act for any of the following reasons:

- The use of fraud or deceit in obtaining or renewing registration.
- Any act of gross negligence, incompetence, or misconduct in conducting or reporting on an onsite wastewater treatment system inspection.
- Failure to satisfactorily complete continuing education requirements.
- Submission of an inspection report that knowingly was based upon false, incorrect, misleading, or fabricated information.
- Failure to pay required fees.

Also, EGLE would have to maintain a list of registered individuals and make the list available on its website.

Violations

A person that knowingly submitted to EGLE or a local health department information related to an onsite wastewater treatment system that was false, incorrect, misleading, or fabricated would be guilty of a misdemeanor punishable by a maximum fine of \$10,000 for each violation and up to one years' imprisonment, or both.

Point of Sale Ordinance

A township, city, or village (local unit of government), county, or local health department could not adopt a point-of-sale ordinance related to onsite wastewater treatment.

"Point of sale" would mean the time at which the sale or transfer of a parcel of real estate is complete. The term would not include a transfer described under Section 3 of the Seller Disclosure Act.³

If a local unit of government or local health department had already adopted a point-of-sale ordinance to require inspections of onsite wastewater treatment systems, the point-of-sale ordinance would have to be phased out or repealed within one year after the bill's effective date. If a county had already adopted a point-of-sale ordinance to require inspections of onsite wastewater treatment systems, the point-of-sale ordinance would have to be phased out or repealed within seven years of the bill's effective date.

Additional Definitions

"Approved onsite wastewater treatment system" would mean an alternative system or conventional system for which construction and any required operating permits have been issued by EGLE or the local health department having jurisdiction and an inspection has found the system to be in compliance with all required permits.

"Experimental onsite wastewater treatment system" would mean an onsite wastewater treatment system that is in experimental use and requires further testing in order to provide sufficient information to determine its acceptability.

"Management" would mean the siting, design, installation, operation, inspection, and maintenance of onsite wastewater treatment systems to ensure that onsite wastewater treatment systems meet required performance standards as prescribed by the technical advisory committee and are protective of public health and the environment.

The bill specifies³ that its definitions and principles would apply to all articles of the Code.

Senate Bill 300

Technical Advisory Committee

The bill would amend the Public Health Code to create the Technical Advisory Committee within EGLE to advise EGLE on all the following:

- Recommended standards and guidance for the management of onsite wastewater treatment systems.

³ Section 3 of the Seller Disclosure Act prescribes exemptions for seller disclosure requirements and specifies that requirements do not apply to certain transfers of governmental entities, transfers pursuant to court orders, transfers in default or foreclosure, among other transfers.

- Nonproprietary technologies and recommended standards and guidance for their use.
- Testing and design standards used for proprietary product registration and recommended standards and guidance for use of proprietary products.
- Recommended standards and guidance for alternative onsite wastewater treatment systems.
- Onsite wastewater treatment system inspection elements and reporting.
- Registered inspector qualifications.
- Documentation required to be submitted to EGLE for qualifying and registering inspectors under Senate Bill 299.
- Qualifications of individuals other than registered inspectors involved in the management of onsite wastewater treatment systems.
- Continuing education requirements for individuals involved in the management of onsite wastewater treatment systems.

Advice to EGLE

The Committee would have to consider the following in its advice to EGLE:

- Sufficient theory and applied research to document efficacy of onsite wastewater treatment systems.
- Potential use, local soil conditions, and other factors that could affect the operation of onsite wastewater treatment systems.
- Field performance data that confirm the product or technology functions when installed on-site as indicated by submitted documents.
- Certification of onsite wastewater treatment systems by NSF International or another recognized certifying agency.

The Committee could consult with experts in the field of management of onsite wastewater treatment systems and other individuals with knowledge and expertise in the management of onsite wastewater treatment systems, including environmental organizations, financial organizations, home builders, real estate licensees, local units of government, and conservation districts.

Also, EGLE would have to provide administrative support to the Committee.

Committee Membership

The Committee would have to consist of members who had technical or scientific knowledge applicable to onsite wastewater treatment systems, including five regional local health department representatives recommended by a State organization representing local health departments and an additional 12 members appointed by the Governor as described below.

The five members appointed as regional health department representatives would have to be appointed as follows:

- One member appointed by the Governor.
- One member appointed by the Speaker of the House of Representatives.
- One member appointed by the Minority Leader of the House of Representatives.
- One member appointed by the Senate Majority Leader.
- One member appointed by the Senate Minority Leader.

Additionally, the Governor would have to appoint the following members:

- Two professional engineers.

- One hydrogeologist.
- One university representative.
- One onsite system product manufacturer.
- One onsite wastewater system installer.
- One onsite wastewater system service provider.
- Two EGLE representatives.
- One State epidemiologist.
- One individual with knowledge of the use of onsite wastewater treatment systems representing users of onsite wastewater treatment systems.
- One representative from a State organization specializing in the protection of public health and the environment through improved water quality.

The members first appointed to the Committee would have to be appointed within 90 days of the bill's effective date. Members of the Committee would have to serve for four-year terms or until a successor was appointed. If a vacancy occurred on the Committee, the Governor would have to make an appointment for the unexpired term in the same manner as the original appointment. The Governor could remove a member of the Committee for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Members of the Committee would have to serve without compensation; however, members could be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

Committee Meetings

The Governor would have to call the first meeting of the Committee. At the first meeting, the Committee would have to elect from among its members a chairperson and other officers as it considered necessary or appropriate. After the first meeting, the Committee would have to meet at least bimonthly, or more frequently at the call of the chairperson or by EGLE's request

A majority of the members of the Committee would constitute a quorum for the transaction of business at a meeting. A majority of the members present and serving would be required for official action of the Committee. The business and writings of the Committee would be subject to the Open Meetings Act and the Freedom of Information Act.

Statewide Code

Within three years of the bill's effective date, EGLE would have to promulgate rules that established a Statewide Code containing performance-based standards for conventional and alternative onsite wastewater treatment systems. Before promulgating these rules, EGLE would have to consult with the Committee. The rules would have to provide baseline protection for public health and the environment and would have to include all the following:

- Minimum standards and criteria for the siting, design, and installation of onsite wastewater treatment systems.
- Wastewater effluent standards, if applicable.
- Corrective actions necessary to protect public health and the environment for onsite wastewater treatment systems that failed to meet these standards.
- Requirements relating to the construction approval process by EGLE and local health departments for onsite wastewater treatment systems.
- Requirements for the operation, inspection, and maintenance of conventional and alternative onsite wastewater treatment systems that define required routine maintenance

necessary to ensure continued proper performance of the system to protect public health and the environment.

- Requirements for the approval of conventional, alternative, and experimental wastewater treatment system products, components, or devices.
- Criteria for requesting and granting appeals by an authorized local health department.
- Qualifications and continuing education requirements for individuals involved in the management of onsite wastewater treatment systems.
- A requirement for septic tanks installed or altered after the bill's effective date to contain a septic tank access riser and secondary safety device.

Additionally, the rules would have to include criteria for allowing the continued use of approved onsite wastewater treatment systems in which a construction permit was issued before the Statewide Code's effective date if use of an onsite wastewater treatment system could be managed in a manner that did all the following:

- Ensured an effective level of treatment of sanitary sewage determined to be necessary, based on risk.
- Protected public health and the environment.
- Protected the surface waters of the state.
- Protected groundwater quality.

Onsite Wastewater Treatment System Administration Fund

The bill would create the Onsite Wastewater Treatment System Administration Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the fund and credit to the Fund interest and earnings from Fund investments.

Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The bill would specify that ELGE would be administrator of the Onsite Wastewater Treatment System Administration Fund for auditing purposes.

Also, EGLE would have to spend money from the Fund, upon appropriation, only for the following purposes:

- To administer Part 128 proposed under Senate Bill 299.
- For grants to local health departments to carry out their responsibilities under Part 128.
- For grants or loans to homeowners who are below 300% of the Federal poverty line to update a failure of an onsite wastewater treatment system identified following an inspection of a system under Senate Bill 299.

"Federal poverty line" means the Federal poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line Federal Law.

FISCAL IMPACT

Senate Bill 299

These bills would have a significant negative fiscal impact on EGLE and an indeterminate negative impact on local units of government. An indeterminate negative fiscal impact would be incurred to administer and implement the bills. The fees and fines introduced in the bills would have a positive fiscal impact on EGLE but are not expected to fully offset the costs to implement and administer the new requirements.

The bill would increase administrative costs for EGLE and local units of government responsible for issuing permits for the installation, construction, alteration and repair of onsite wastewater treatment systems. It also would require EGLE to maintain a database for tracking inspections, adding further administrative efforts and costs. The Department estimates a one-time expenditure of \$12.8 million for developing a statewide database and cloud-based application IT system, plus an additional \$1.0 million would be dedicated to a statewide educational and marketing campaign.

Beyond initial costs, EGLE projects ongoing funding of \$11.4 million would be needed to implement and maintain the program. Of this, \$3.8 million would support 24.0 full-time equivalents, \$1.4 million to maintain and support the new IT system, and \$6.2 million for local health departments for essential local public health services.

Additionally, there would be administrative costs for reviewing applications for product registration. The Department's administrative costs would be offset by charging an application fee of \$3,000 valid for 5 years. Further administrative costs would arise from developing standards for permitting systems which depend on the total number of systems used and developed. The Department also would collect revenue from fines of \$10,000 assessed from the submission of knowingly false, incorrect, misleading, or fabricated information. There also would be an indeterminate cost to local health departments that would be responsible for conducting inspections as necessitated by the bill. Failed inspections unresolved within six months would result in fines of up to \$1,000 for each additional month.

The bill would require a \$25 State administrative fee for onsite treatment system inspections to be forwarded to EGLE. Inspectors would have to register with EGLE and submit a \$180 application fee. Registrations would be reviewed and renewed by EGLE every three years for individuals continuing to meet requirements. These fees would have an indeterminate positive fiscal impact for EGLE depending on the number of inspections and inspectors required throughout the State. The Department estimates revenue generated by the fees and fines in the bill at approximately \$3.4 million.

As the anticipated revenue is significantly less than the projected costs associated with implementation, these bills would likely require further appropriations, resulting in a negative fiscal impact on the State.

The bill could have an indeterminate negative fiscal impact and an indeterminate positive fiscal impact on State and local government. New misdemeanor arrests and convictions under the proposed bill could increase resource demands on law enforcement, court systems, community supervision, and jails; however, it is unknown how many people would be prosecuted under provisions of the bill. Local jail costs vary by jurisdiction and thus costs for local governments would vary.

Additionally, the bill would impose a civil fine of up to \$1,000 for owners of onsite wastewater treatment systems who do not comply. Local revenue to local and county law libraries could increase under the bill as any additional revenue from imposed misdemeanor fines would go to local libraries. Revenue from civil fines also would go to local libraries with \$10 of the civil fine would be deposited into the state Justice System Fund. This Fund supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

The bill would have an indeterminate fiscal impact on local government units. This indeterminate fiscal impact is due to the increased cost of inspections and administrative costs

along with the ability to charge a fee for these services. If the fee covered all the increased costs, then there would be a net-zero fiscal impact on local government units.

Senate Bill 300

This bill would have a minor negative fiscal impact on EGLE for administrative costs to support the newly created technical advisory committee and reimbursing committee members for duties as members.

The bill also would create the Onsite Wastewater Treatment System Administration Fund within the State Treasury. The bill would have no fiscal impact on the Department of Treasury. The ongoing costs associated with administering and investing in the Fund are estimated to be less than \$100 and are within current appropriations.

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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.