

As Introduced

136th General Assembly

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H. B. No. 640

Representative Pizzulli

To amend sections 3718.02, 3718.021, 3718.11, 1
6111.44, and 6111.441 of the Revised Code to 2
make changes to the law governing household 3
sewage treatment systems. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3718.02, 3718.021, 3718.11, 5
6111.44, and 6111.441 of the Revised Code be amended to read as 6
follows: 7

Sec. 3718.02. (A) The Subject to division (C) of this 8
section, the director of health, in accordance with Chapter 119. 9
of the Revised Code, shall adopt, and subsequently may amend and 10
rescind, rules of general application throughout the state to 11
administer this chapter. Rules adopted under division (A) of 12
this section shall do at least all of the following: 13

(1) Require that the appropriate board of health approve 14
or disapprove the installation, operation, and alteration of a 15
sewage treatment system if it is not connected to a sanitary 16
sewerage system; 17

(2) Require a board of health, or other person as 18
established by rule, to conduct a site evaluation for any 19
proposed installation of a sewage treatment system~~+~~, provided 20

that soil evaluations shall not be required unless the board of 21
health has a good-faith reason to conduct a soil evaluation at 22
the site that is in the interest of public health and safety. 23
However, in all circumstances, a property owner may request a 24
soil evaluation. 25

(3) Prescribe standards for the siting, design, 26
installation, operation, monitoring, maintenance, and 27
abandonment of sewage treatment systems that may be used in this 28
state and for the progressive or incremental alteration or 29
repair of an existing sewage treatment system or the progressive 30
or incremental installation of a new system to replace an 31
existing sewage treatment system. The rules shall be adopted so 32
as to establish a preference for the repair of an existing 33
sewage treatment system, when technically and economically 34
feasible, rather than its replacement with a new system. The 35
standards shall include at a minimum all of the following: 36

(a) Soil absorption specifications and vertical separation 37
distances. 38

(i) Soil absorption specifications established in rules 39
shall include standards regarding the sizing of sewage treatment 40
systems in use in the state. 41

(ii) In establishing soil absorption specifications and 42
vertical separation distances, the rules shall identify those 43
soil conditions that present a low or moderate risk of 44
inadequate treatment or dispersal of sewage from sewage 45
treatment systems. For low and moderate risk conditions, the 46
required vertical separation distance shall not exceed eighteen 47
inches except as authorized pursuant to rules adopted under 48
divisions (A) (3) (a) (iii) and (iv) of this section. 49

In addition, the rules shall identify those soil 50
conditions that present a high risk of inadequate treatment or 51
dispersal of sewage. For such high risk conditions, the vertical 52
separation distance shall be set at a depth from twenty-four to 53
thirty-six inches and shall not be lowered unless a reduction of 54
vertical separation is granted in accordance with rules adopted 55
under division (A) (3) (a) (iii) of this section. 56

(iii) The rules shall establish options to be utilized by 57
a board of health when approving the reductions of or compliance 58
with vertical separation distances that are established in rules 59
adopted under division (A) (3) (a) (ii) of this section. The 60
options for a board of health in providing such approval shall 61
include, but not be limited to: the use where deemed appropriate 62
for a particular site of subsurface interceptor drains, 63
perimeter drains, or engineered drainage; pretreatment of 64
sewage; or soil elevation. 65

(iv) The rules shall provide that a board of health may 66
petition the director to increase the vertical separation 67
distances required for sewage treatment systems in the 68
applicable health district or a portion of the district when 69
conditions present a high risk of inadequate treatment or 70
dispersal of sewage. The rules also shall provide that the 71
director may approve such a request upon a demonstration by the 72
board of health that unusual or unique local conditions relating 73
to terrain, bedrock, water table, soil fragments, or soil 74
textures require the establishment of greater vertical 75
separation distances within the jurisdiction of the board of 76
health or a portion thereof. If, under the rules, the director 77
of health approves a greater vertical separation distance, a 78
board of health still may approve a reduction of that vertical 79
separation distance for an individual sewage treatment system 80

pursuant to rules adopted under division (A) (3) (a) (iii) of this 81
section. Further, if, under the rules, the director approves a 82
greater vertical separation distance, a person who is denied 83
permission by a board of health to install or replace a sewage 84
treatment system as a result of the director's approval may 85
request a hearing in accordance with section 3718.11 of the 86
Revised Code. 87

(b) Specifications for the quality of treated sewage 88
effluent from household sewage treatment systems that is applied 89
to soil on the property where a household sewage treatment 90
system is located. The specifications established in the rules 91
for the quality of effluent from discharging systems shall 92
comply with discharge requirements imposed by the national 93
pollutant discharge elimination system permit program 94
established under section 6111.03 of the Revised Code and rules 95
adopted under it. 96

(c) Requirements for the reasonable maintenance of a 97
system according to maintenance requirements approved by the 98
director of health as recommended by the sewage treatment system 99
technical advisory committee or according to accepted standards 100
and practices established in rules, as applicable. The 101
requirements may include standards for service contracts or 102
other arrangements that assure regular maintenance and upkeep of 103
the system. In determining the reasonableness of a maintenance 104
requirement, the director shall consider a manufacturer's 105
maintenance requirements as well as all other maintenance 106
alternatives. 107

(4) Prescribe procedures for notification to boards of 108
health of the approval of a sewage treatment system or 109
components of a system by the director of health under section 110

3718.04 of the Revised Code; 111

(5) Prescribe criteria and procedures under which boards 112
of health shall issue installation permits, operation permits, 113
and alteration permits for sewage treatment systems. The rules 114
shall require as a condition of an installation permit that the 115
installer of a system must warrant that the system was installed 116
in accordance with all applicable rules and design requirements. 117
In addition, the rules shall require a board of health, not 118
later than sixty days after the issuance of an installation, 119
operation, or alteration permit, to notify the director that the 120
permit was issued. The rules shall require the notification to 121
be in a format prescribed by the director and to include 122
information related to the issuance of the permit. With the 123
assistance of the department of health, a board of health, to 124
the extent practicable, shall computerize the process of the 125
issuance of permits for sewage treatment systems. 126

~~(6) Require a board of health to inspect a sewage 127
treatment system not later than twelve months after its 128
installation to ensure that the system is operating properly. 129
The rules shall require a board of health, not later than sixty- 130
days after the inspection, to certify to the director on a form 131
provided by the director that the inspection was performed. 132~~

~~(7) Require each board of health to develop a program for 133
the administration of maintenance requirements established in 134
rules adopted under division (A) (3) (c) of this section. The 135
rules shall include requirements and procedures under which a 136
person may demonstrate the required maintenance of a system in 137
lieu of having an inspection conducted when an inspection 138
otherwise is required. The rules shall require a board of health 139
to provide written notice to a person that is demonstrating 140~~

~~maintenance of a system in lieu of an inspection that if proof-~~ 141
~~of the required maintenance of the system is not provided as-~~ 142
~~required by rules, the system is subject to inspection by the-~~ 143
~~board and the reasonable cost of the inspection must be paid by-~~ 144
~~the person.~~ The rules shall authorize a board of health to 145
inspect any sewage treatment system if there is a good-faith 146
complaint regarding the system, or there is probable cause for 147
the inspection, ~~or proof of the required maintenance of the-~~ 148
~~system has not been provided as required by rules.~~ In addition, 149
the rules shall authorize a board of health to inspect a sewage 150
treatment system without prior notice in any instance in which 151
the board has probable cause to believe that the system is 152
endangering or threatening to endanger public health. The rules 153
shall require that the reasonable costs for sewage effluent 154
testing or evaluation be paid by the owner of a sewage treatment 155
system that is being investigated. Further, the rules shall 156
establish a methodology for determining the reasonable costs of 157
an inspection in accordance with section 3709.09 of the Revised 158
Code. The rules shall allow, but shall not require, a board of 159
health to continue an inspection program that was established by 160
the board prior to the effective date of the rules, provided 161
that the program ~~authorizes a person to demonstrate the required~~ 162
~~maintenance of a system in lieu of~~ does not require an annual 163
inspection or an inspection conducted without probable cause 164
that the system is endangering or threatening to endanger public 165
health or without a good-faith complaint regarding the system. 166

~~(8)~~ (7) Require a board of health to register installers, 167
service providers, and septage haulers that perform work within 168
the health district; prescribe criteria and procedures for the 169
registration; and prescribe criteria for a demonstration of 170
competency as a part of the registration. The rules shall 171

establish uniform statewide bonding requirements or other 172
financial security requirements for installers, service 173
providers, and septage haulers as a condition of registration 174
within any health district. The rules shall establish a 175
methodology by which the required amount of a bond or other 176
security may be calculated for each installer, service provider, 177
and septage hauler. The methodology, at a minimum, shall 178
consider the number of systems installed or serviced and the 179
type of system installed or serviced by an installer, service 180
provider, or septage hauler on an annual basis. The rules shall 181
provide that no board of health shall require an additional or 182
different bond or security requirement as a condition of 183
registration beyond the bonding and security requirements 184
established in the rules adopted under division ~~(A)(8)~~ (A)(7) of 185
this section. 186

The rules shall establish a cost methodology for 187
determining the fee for the registration of an installer, 188
service provider, or septage hauler in any health district. 189

~~(9)~~ (8) Prescribe requirements for the collection, 190
transportation, disposal, and land application of domestic 191
septage in this state from a sewage treatment system; 192

~~(10)~~ (9) Require boards of health to maintain records that 193
are determined necessary to ascertain compliance with this 194
chapter and the rules adopted under it; 195

~~(11)~~ (10) Require the manufacturer of a sewage treatment 196
system that is authorized for use in this state in rules adopted 197
under this section or that is approved for use in this state 198
under section 3718.04 of the Revised Code to provide 199
instructions for the operation and maintenance of the system. 200
The rules shall provide that a board of health may require a 201

copy of a manufacturer's instructions for the operation and 202
maintenance of a system to be filed with the board prior to the 203
installation and use of the system in the health district in 204
which the board has jurisdiction. In addition, the rules shall 205
require a board of health and a manufacturer to provide a copy 206
of the operation and maintenance instructions, if available, 207
when a board of health or a manufacturer receives a written 208
request for instructions. 209

~~(12)~~ (11) Prescribe criteria for the provision of written 210
evidence of compliance with rules pertaining to sewage treatment 211
for purposes of sections 711.05 and 711.10 of the Revised Code; 212

~~(13)~~ (12) Pursuant to divisions (A) (1) and (3) of this 213
section, prescribe standards for the siting, design, 214
installation, operation, monitoring, maintenance, and 215
abandonment of small flow on-site sewage treatment systems that 216
may be used in this state; 217

~~(14)~~ (13) Prescribe minimum criteria and procedures under 218
which boards of health may establish household sewage treatment 219
district management programs for the purpose of providing a 220
responsive approach toward preventing or solving sewage 221
treatment problems resulting from household sewage treatment 222
systems within the districts established under the program. For 223
purposes of division ~~(A) (14)~~ (A) (13) of this section, a board of 224
health may enter into a contract with any entity to administer a 225
household sewage treatment district management program. 226

~~(15)~~ (14) Prescribe standards for the use of subsurface 227
interceptor drains, perimeter drains, and engineered drainage to 228
remove or divert any subsurface water from an area to be used 229
for soil absorption of sewage in the soil of a sewage treatment 230
system; 231

(16) <u>(15)</u> Prescribe standards for the inspection of septage	232
hauling truck tanks by boards of health, including, but not	233
limited to, tank seal safety specifications;	234
(17) <u>(16)</u> Establish standards and testing methods to ensure	235
that all septic tanks, other disposal component tanks, dosing	236
tanks, pump vaults, household sewage treatment disposal system	237
holding tanks and privy vaults, or other applicable sewage	238
disposal system components manufactured after September 17,	239
2010, and used in this state are watertight and structurally	240
sound;	241
(18) <u>(17)</u> Require a board of health to give notice and an	242
opportunity for a hearing, pursuant to section 3718.11 of the	243
Revised Code, to an affected property owner regarding any of the	244
following:	245
(a) The denial of an installation, operation, or	246
alteration permit for a sewage treatment system;	247
(b) The imposition of a condition on the installation of a	248
sewage treatment system;	249
(c) The required replacement of a sewage treatment system;	250
(d) Any other final order or decision of a board of health	251
that is made under this chapter concerning which a property	252
owner is claiming to be aggrieved or adversely affected.	253
The rules also shall establish procedures for giving such	254
notice and for conducting the hearing required in rules adopted	255
under division (A) <u>(18)</u> (A) <u>(17)</u> of this section.	256
(19) <u>(18)</u> Prescribe standards for the regulation of gray	257
water recycling systems;	258
(20) <u>(19)</u> Prohibit a sewage treatment system from causing a	259

public health nuisance; 260

~~(21)~~(20) Define economic impact for purposes of division 261
(B) of this section and section 3718.022 of the Revised Code. 262

The director may adopt other rules under division (A) of 263
this section that the director determines are necessary to 264
implement this chapter and to protect the public health and 265
welfare. 266

At least sixty days prior to adopting a rule under 267
division (A) of this section, the director shall provide boards 268
of health and any other interested parties an opportunity to 269
comment on the rule. 270

(B) (1) In accordance with section 3709.20 or 3709.21 of 271
the Revised Code, as applicable, and subject to review by and 272
approval of the director under division (C) of section 3718.05 273
of the Revised Code, a board of health may adopt rules necessary 274
for the public health providing for more stringent standards 275
than those established in rules adopted by the director under 276
division (A) of this section. In proposing or adopting the 277
rules, a board of health shall consider and document the 278
economic impact of the rules on property owners within the 279
applicable health district. 280

(2) A board that intends to adopt rules shall notify the 281
department of health of the proposed rules and submit a copy of 282
the proposed rules and the documentation of the economic impact 283
of the rules at least ninety days prior to the proposed date of 284
adoption. The director shall approve or disapprove any such 285
proposed rule within ninety days after receiving a copy of the 286
proposed rule from the board of health. 287

(3) In reviewing a proposed rule, the director shall 288

approve the rule if all of the following apply:	289
(a) The proposed rule is not in conflict with this chapter	290
or rules adopted under it.	291
(b) The proposed rule is authorized by division (B) of	292
this section.	293
(c) The proposed rule is no less stringent than rules	294
adopted by the director.	295
(d) Unless otherwise authorized by this chapter or rules	296
adopted under it, the proposed rule does not require design	297
changes to a sewage treatment system, or component thereof, that	298
differ from a design authorized in rules adopted under division	299
(A) of this section, including rules adopted under division (A)	300
(1) or (A) (3) (a) (iii) or (iv) of this section, or approved by	301
the director under section 3718.04 of the Revised Code.	302
(e) The proposed rule does not require operation or	303
maintenance procedures for a sewage treatment system that	304
conflict with operation or maintenance procedures authorized in	305
rules adopted under division (A) of this section, including	306
rules adopted under division (A) (1) or (A) (3) (a) (iii) or (iv) of	307
this section, or approved by the director under section 3718.04	308
of the Revised Code.	309
(4) If a board of health fails to submit a proposed rule	310
to the director or fails to demonstrate that the board has	311
considered the economic impact of the proposed rule, the rule	312
shall have no force or effect and is not enforceable.	313
<u>(C) (1) Notwithstanding any provision to the contrary, no</u>	314
<u>board of health shall require any of the following:</u>	315
<u>(a) A mandatory annual inspection of a system;</u>	316

(b) An inspection conducted without probable cause that 317
the system is endangering or threatening to endanger public 318
health; 319

(c) An inspection conducted without a good-faith complaint 320
regarding the system. 321

(2) Notwithstanding any provision to the contrary, no 322
board of health shall prohibit a household sewage treatment 323
system from being installed on a slope so long as effluent is 324
designed to leach downhill in a manner protective of public 325
health and safety. 326

(3) Notwithstanding any provision to the contrary, no 327
board of health shall require a new design approval, site 328
drawing, or new permit for a household sewage treatment system 329
that is being replaced if there are no proposed substantive 330
changes to the original system. 331

(4) Notwithstanding any provision to the contrary, no 332
board of health shall require a household sewage treatment 333
system to be installed in an undisturbed area, provided the soil 334
meets basic functionality requirements determined by the board. 335

Sec. 3718.021. (A) A board of health may regulate the 336
siting, design, installation, operation, monitoring, 337
maintenance, and abandonment of small flow on-site sewage 338
treatment systems in accordance with rules adopted by the 339
director of health under division ~~(A) (13)~~ (A) (12) of section 340
3718.02 of the Revised Code. If a board of health chooses to 341
regulate small flow on-site sewage treatment systems, the board 342
first shall send written notification to the director of health 343
and the director of environmental protection. 344

(B) If a board of health chooses to regulate small flow 345

on-site sewage treatment systems under division (A) of this 346
section and later determines that it no longer wants to regulate 347
those systems, the board shall notify the director of health and 348
the director of environmental protection. Upon the receipt of 349
the notification by the director of environmental protection, 350
the board of health shall cease regulating small flow on-site 351
sewage treatment systems, and the environmental protection 352
agency shall regulate those systems. 353

(C) If after a survey conducted under section 3718.07 of 354
the Revised Code the director of health finds that a board of 355
health that has chosen to regulate small flow on-site sewage 356
treatment systems is not complying with the rules adopted under 357
division ~~(A) (13)~~ (A) (12) of section 3718.02 of the Revised Code, 358
the director shall notify the director of environmental 359
protection and the board of health. Upon receipt of the 360
notification, the board shall cease regulating small flow on- 361
site sewage treatment systems, and the environmental protection 362
agency shall regulate those systems. 363

Sec. 3718.11. (A) A property owner may request a hearing 364
with the board of health for any reason described in division 365
~~(A) (18)~~ (A) (17) of section 3718.02 of the Revised Code. A 366
property owner may appeal the results of the hearing to either 367
of the following: 368

(1) The court of common pleas of the county in which the 369
property owner's land is located; 370

(2) A sewage treatment system appeals board that is 371
established in accordance with this section. 372

(B) A property owner that wishes to appeal to a sewage 373
treatment system appeals board shall file the appeal with the 374

board of health within whose jurisdiction the property owner's 375
land is located. Upon receipt of a filing, the board of health 376
shall send the filing of the appeal to the chairperson of the 377
sewage treatment system appeals board for the county in which 378
the board of health has jurisdiction. 379

(C) (1) Not later than ninety days after ~~the effective date~~ 380
~~of this section~~ September 17, 2010, a sewage treatment system 381
appeals board shall be appointed for each county as follows: 382

(a) One member shall be appointed by the health 383
commissioner of the general health district having jurisdiction 384
in the county. 385

(b) One member shall be appointed by the judge of the 386
probate court of the county having the longest continuous 387
service as a judge of the probate court. 388

(c) One member shall be appointed by the director of 389
health. 390

(2) Terms of appointment to a sewage treatment system 391
appeals board shall be for two years. Members may be 392
reappointed. Vacancies shall be filled in the same manner as 393
provided for original appointments. Any member appointed to fill 394
a vacancy occurring prior to the expiration of the term for 395
which the member was appointed shall hold office for the 396
remainder of that term. 397

(3) The person appointed by the judge of the probate court 398
shall serve as chairperson of the board. A majority vote of the 399
members of the board is necessary to take action on any matter. 400
The chairperson of the board shall designate the time and 401
location for a hearing before the board. Members of the board 402
shall serve without compensation. 403

(4) A board of health shall send an appeal that has been 404
filed with the board of health under division (B) of this 405
section to the sewage treatment system appeals board immediately 406
after the appeal has been filed. Not later than forty-five days 407
after a hearing before a sewage treatment system appeals board, 408
the board shall issue a written decision concerning an appeal 409
before the board. 410

(5) The judge of the probate court who made an appointment 411
to the board under this section shall establish due process 412
procedures to be used by the applicable sewage treatment system 413
appeals board appointed under this section for the purpose of 414
hearing appeals regarding orders and decisions of a board of 415
health. All appeals before the applicable sewage treatment 416
system appeals board shall be conducted in accordance with those 417
procedures. The procedures may include filing fees applicable to 418
appeals conducted by the sewage treatment system appeals board. 419

(D) An appeal before a sewage treatment system appeals 420
board is final, and no further appeal may be taken. 421

Sec. 6111.44. (A) Except as otherwise provided in division 422
(B) of this section, in section 6111.14 of the Revised Code, or 423
in rules adopted under division (G) of section 6111.03 of the 424
Revised Code, no municipal corporation, county, public 425
institution, corporation, or officer or employee thereof or 426
other person shall provide or install sewerage or treatment 427
works for sewage, sludge, or sludge materials disposal or 428
treatment or make a change in any sewerage or treatment works 429
until the plans therefor have been submitted to and approved by 430
the director of environmental protection. Sections 6111.44 to 431
6111.46 of the Revised Code apply to sewerage and treatment 432
works of a municipal corporation or part thereof, an 433

unincorporated community, a county sewer district, or other land 434
outside of a municipal corporation or any publicly or privately 435
owned building or group of buildings or place, used for the 436
assemblage, entertainment, recreation, education, correction, 437
hospitalization, housing, or employment of persons. 438

In granting an approval, the director may stipulate 439
modifications, conditions, and rules that the public health and 440
prevention of pollution may require. Any action taken by the 441
director shall be a matter of public record and shall be entered 442
in the director's journal. Each period of thirty days that a 443
violation of this section continues, after a conviction for the 444
violation, constitutes a separate offense. 445

(B) Sections 6111.45 and 6111.46 of the Revised Code and 446
division (A) of this section do not apply to any of the 447
following: 448

(1) Sewerage or treatment works for sewage installed or to 449
be installed for the use of a private residence or dwelling; 450

(2) Sewerage systems, treatment works, or disposal systems 451
for storm water from an animal feeding facility or manure, as 452
"animal feeding facility" and "manure" are defined in section 453
903.01 of the Revised Code; 454

(3) Residual farm products and manure treatment or 455
disposal works and related management and conservation practices 456
that are subject to rules adopted under division (E) (1) of 457
section 939.02 of the Revised Code. As used in division (B) (3) 458
of this section, "residual farm products" and "manure" have the 459
same meanings as in section 939.01 of the Revised Code. 460

(4) Sewerage or treatment works for the on-lot disposal or 461
treatment of sewage from a small flow on-site sewage treatment 462

system, as defined in section 3718.01 of the Revised Code, if 463
the board of health of a city or general health district has 464
notified the director of health and the director of 465
environmental protection under section 3718.021 of the Revised 466
Code that the board has chosen to regulate the system, provided 467
that the board remains in compliance with the rules adopted 468
under division ~~(A) (13)~~ (A) (12) of section 3718.02 of the Revised 469
Code. 470

The exclusions established in divisions (B) (2) and (3) of 471
this section do not apply to the construction or installation of 472
disposal systems, as defined in section 6111.01 of the Revised 473
Code, that are located at an animal feeding facility and that 474
store, treat, or discharge wastewaters that do not include storm 475
water or manure or that discharge to a publicly owned treatment 476
works. 477

Sec. 6111.441. In addition to the exemption established 478
under division (B) (4) of section 6111.44 of the Revised Code, 479
sewerage or treatment works for the on-lot disposal or treatment 480
of sewage from a small flow on-site sewage treatment system, as 481
defined in section 3718.01 of the Revised Code, concerning which 482
the board of health of a city or general health district has 483
notified the director of health and the director of 484
environmental protection under section 3718.021 of the Revised 485
Code that the board has chosen to regulate the system are exempt 486
from the administrative and permitting requirements established 487
in this chapter and rules adopted under it and the fees 488
established under section 3745.11 of the Revised Code, provided 489
that the board remains in compliance with the rules adopted 490
under division ~~(A) (13)~~ (A) (12) of section 3718.02 of the Revised 491
Code. 492

Section 2. That existing sections 3718.02, 3718.021,	493
3718.11, 6111.44, and 6111.441 of the Revised Code are hereby	494
repealed.	495