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Representatives Pizzulli, John

Cosponsors: Representatives Deeter, Salvo, Robb Blasdel, Young, Williams, Bird, Thomas, D., Hall, T., Daniels, Fischer, Moore, Ritter

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

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

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

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

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

(2) Require a board of health, or other person as

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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 separation distance for an individual sewage treatment system pursuant to rules adopted under division (A)(3)(a)(iii) of this section. Further, if, under the rules, the director approves a greater vertical separation distance, a person who is denied permission by a board of health to install or replace a sewage treatment system as a result of the director's approval may request a hearing in accordance with section 3718.11 of the Revised Code.	79 80 81 82 83 84 85 86 87
(b) Specifications for the quality of treated sewage effluent from household sewage treatment systems that is applied to soil on the property where a household sewage treatment system is located. The specifications established in the rules for the quality of effluent from discharging systems shall comply with discharge requirements imposed by the national pollutant discharge elimination system permit program established under section 6111.03 of the Revised Code and rules adopted under it.	88 89 90 91 92 93 94 95 96
(c) Requirements for the reasonable maintenance of a system according to maintenance requirements approved by the director of health as recommended by the sewage treatment system technical advisory committee or according to accepted standards and practices established in rules, as applicable. The requirements may include standards for service contracts or other arrangements that assure regular maintenance and upkeep of the system. In determining the reasonableness of a maintenance requirement, the director shall consider a manufacturer's maintenance requirements as well as all other maintenance alternatives.	97 98 99 100 101 102 103 104 105 106 107
(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 to provide written notice to a person that is demonstrating maintenance of a system in lieu of an inspection that if proof of the required maintenance of the system is not provided as required by rules, the system is subject to inspection by the board and the reasonable cost of the inspection must be paid by the person. The rules shall authorize a board of health to inspect any sewage treatment system if there is a good-faith complaint regarding the system, or there is probable cause for the inspection, or proof of the required maintenance of the system has not been provided as required by rules. In addition, the rules shall authorize a board of health to inspect a sewage treatment system without prior notice in any instance in which the board has probable cause to believe that the system is endangering or threatening to endanger public health. The rules shall require that the reasonable costs for sewage effluent testing or evaluation be paid by the owner of a sewage treatment system that is being investigated. Further, the rules shall establish a methodology for determining the reasonable costs of an inspection in accordance with section 3709.09 of the Revised Code. The rules shall allow, but shall not require, a board of health to continue an inspection program that was established by the board prior to the effective date of the rules, provided that the program authorizes a person to demonstrate the required maintenance of a system in lieu of does not require an annual inspection or an inspection conducted without probable cause that the system is endangering or threatening to endanger public health or without a good-faith complaint regarding the system.

(8) (7) Require a board of health to register installers, service providers, and septic haulers that perform work within the health district; prescribe criteria and procedures for the

registration; and prescribe criteria for a demonstration of competency as a part of the registration. The rules shall establish uniform statewide bonding requirements or other financial security requirements for installers, service providers, and septage haulers as a condition of registration within any health district. The rules shall establish a methodology by which the required amount of a bond or other security may be calculated for each installer, service provider, and septage hauler. The methodology, at a minimum, shall consider the number of systems installed or serviced and the type of system installed or serviced by an installer, service provider, or septage hauler on an annual basis. The rules shall provide that no board of health shall require an additional or different bond or security requirement as a condition of registration beyond the bonding and security requirements established in the rules adopted under division ~~(A)(8)~~(A)(7) of this section.

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

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

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

~~(11)~~(10) Require the manufacturer of a sewage treatment system that is authorized for use in this state in rules adopted under this section or that is approved for use in this state under section 3718.04 of the Revised Code to provide

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) 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) 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) 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) 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) 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 system;	230 231
<u>(16)</u> Prescribe standards for the inspection of septic hauling truck tanks by boards of health, including, but not limited to, tank seal safety specifications;	232 233 234
<u>(17)</u> Establish standards and testing methods to ensure that all septic tanks, other disposal component tanks, dosing tanks, pump vaults, household sewage treatment disposal system holding tanks and privy vaults, or other applicable sewage disposal system components manufactured after September 17, 2010, and used in this state are watertight and structurally sound;	235 236 237 238 239 240 241
<u>(18)</u> Require a board of health to give notice and an opportunity for a hearing, pursuant to section 3718.11 of the Revised Code, to an affected property owner regarding any of the following:	242 243 244 245
(a) The denial of an installation, operation, or alteration permit for a sewage treatment system;	246 247
(b) The imposition of a condition on the installation of a sewage treatment system;	248 249
(c) The required replacement of a sewage treatment system;	250
(d) Any other final order or decision of a board of health that is made under this chapter concerning which a property owner is claiming to be aggrieved or adversely affected.	251 252 253
The rules also shall establish procedures for giving such notice and for conducting the hearing required in rules adopted under division <u>(A)</u> <u>(18)</u> <u>(A)</u> <u>(17)</u> of this section.	254 255 256
<u>(19)</u> Prescribe standards for the regulation of gray	257

water recycling systems;	258
<u>(20)</u> Prohibit a sewage treatment system from causing a public health nuisance;	259
<u>(21)</u> Define economic impact for purposes of division (B) of this section and section 3718.022 of the Revised Code.	260
The director may adopt other rules under division (A) of this section that the director determines are necessary to implement this chapter and to protect the public health and welfare.	261
At least sixty days prior to adopting a rule under division (A) of this section, the director shall provide boards of health and any other interested parties an opportunity to comment on the rule.	262
(B) (1) In accordance with section 3709.20 or 3709.21 of the Revised Code, as applicable, and subject to review by and approval of the director under division (C) of section 3718.05 of the Revised Code, a board of health may adopt rules necessary for the public health providing for more stringent standards than those established in rules adopted by the director under division (A) of this section. In proposing or adopting the rules, a board of health shall consider and document the economic impact of the rules on property owners within the applicable health district.	263
(2) A board that intends to adopt rules shall notify the department of health of the proposed rules and submit a copy of the proposed rules and the documentation of the economic impact of the rules at least ninety days prior to the proposed date of adoption. The director shall approve or disapprove any such proposed rule within ninety days after receiving a copy of the	264
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proposed rule from the board of health.	287
(3) In reviewing a proposed rule, the director shall approve the rule if all of the following apply:	288 289
(a) The proposed rule is not in conflict with this chapter or rules adopted under it.	290 291
(b) The proposed rule is authorized by division (B) of this section.	292 293
(c) The proposed rule is no less stringent than rules adopted by the director.	294 295
(d) Unless otherwise authorized by this chapter or rules adopted under it, the proposed rule does not require design changes to a sewage treatment system, or component thereof, that differ from a design authorized in rules adopted under division (A) of this section, including rules adopted under division (A) (1) or (A) (3) (a) (iii) or (iv) of this section, or approved by the director under section 3718.04 of the Revised Code.	296 297 298 299 300 301 302
(e) The proposed rule does not require operation or maintenance procedures for a sewage treatment system that conflict with operation or maintenance procedures authorized in rules adopted under division (A) of this section, including rules adopted under division (A) (1) or (A) (3) (a) (iii) or (iv) of this section, or approved by the director under section 3718.04 of the Revised Code.	303 304 305 306 307 308 309
(4) If a board of health fails to submit a proposed rule to the director or fails to demonstrate that the board has considered the economic impact of the proposed rule, the rule shall have no force or effect and is not enforceable.	310 311 312 313
(C) (1) Notwithstanding any provision to the contrary, no	314

<u>board of health shall require any of the following:</u>	315
<u>(a) A mandatory annual inspection of a system;</u>	316
<u>(b) An inspection conducted without probable cause that the system is endangering or threatening to endanger public health;</u>	317
<u>(c) An inspection conducted without a good-faith complaint regarding the system.</u>	318
<u>(2) Notwithstanding any provision to the contrary, no board of health shall prohibit a household sewage treatment system from being installed on a slope so long as effluent is designed to leach downhill in a manner protective of public health and safety.</u>	319
<u>(3) Notwithstanding any provision to the contrary, no board of health shall require a new design approval, site drawing, or new permit for a household sewage treatment system that is being replaced if there are no proposed substantive changes to the original system.</u>	320
<u>(4) Notwithstanding any provision to the contrary, no board of health shall require a household sewage treatment system to be installed in an undisturbed area, provided the soil meets basic functionality requirements determined by the board.</u>	321
Sec. 3718.021. (A) A board of health may regulate the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems in accordance with rules adopted by the director of health under division (A) (13) <u>(A) (12)</u> of section 3718.02 of the Revised Code. If a board of health chooses to regulate small flow on-site sewage treatment systems, the board first shall send written notification to the director of health	322
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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 treatment system appeals board shall file the appeal with the board of health within whose jurisdiction the property owner's land is located. Upon receipt of a filing, the board of health shall send the filing of the appeal to the chairperson of the sewage treatment system appeals board for the county in which the board of health has jurisdiction. 373
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(C) (1) Not later than ninety days after ~~the effective date of this section~~September 17, 2010, a sewage treatment system appeals board shall be appointed for each county as follows: 380
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(a) One member shall be appointed by the health commissioner of the general health district having jurisdiction in the county. 383
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(b) One member shall be appointed by the judge of the probate court of the county having the longest continuous service as a judge of the probate court. 386
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(c) One member shall be appointed by the director of health. 389
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(2) Terms of appointment to a sewage treatment system appeals board shall be for two years. Members may be reappointed. Vacancies shall be filled in the same manner as provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member was appointed shall hold office for the remainder of that term. 391
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(3) The person appointed by the judge of the probate court shall serve as chairperson of the board. A majority vote of the members of the board is necessary to take action on any matter. The chairperson of the board shall designate the time and 398
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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 treatment of sewage from a small flow on-site sewage treatment system, as defined in section 3718.01 of the Revised Code, if the board of health of a city or general health district has notified the director of health and the director of environmental protection under section 3718.021 of the Revised Code that the board has chosen to regulate the system, provided that the board remains in compliance with the rules adopted under division ~~(A)(13)~~(A)(12) of section 3718.02 of the Revised Code. 461
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The exclusions established in divisions (B)(2) and (3) of this section do not apply to the construction or installation of disposal systems, as defined in section 6111.01 of the Revised Code, that are located at an animal feeding facility and that store, treat, or discharge wastewaters that do not include storm water or manure or that discharge to a publicly owned treatment works. 471
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Sec. 6111.441. In addition to the exemption established under division (B)(4) of section 6111.44 of the Revised Code, sewerage or treatment works for the on-lot disposal or treatment of sewage from a small flow on-site sewage treatment system, as defined in section 3718.01 of the Revised Code, concerning which the board of health of a city or general health district has notified the director of health and the director of environmental protection under section 3718.021 of the Revised Code that the board has chosen to regulate the system are exempt from the administrative and permitting requirements established in this chapter and rules adopted under it and the fees established under section 3745.11 of the Revised Code, provided that the board remains in compliance with the rules adopted under division ~~(A)(13)~~(A)(12) of section 3718.02 of the Revised 478
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Code. 492

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