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BILL ANALYSIS

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Senate Bill 771 (as introduced 1-28-26)
Sponsor: Senator Sam Singh
Committee: Natural Resources and Agriculture

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INTRODUCTION

The bill would authorize the Department of Environment, Great Lakes, and Energy (EGLE) and local health departments to inspect onsite wastewater treatment systems and regulate their installation, repair, and replacement. Within three years of the bill's effective date, EGLE would have to establish a Statewide Sewage Code that included management requirements and performance standards for systems to provide baseline protection for public health and the environment. The bill also would create a Technical Advisory Committee to advise EGLE on system standards, technologies, evaluator qualifications, and implementation of the Code. Additionally, the bill would require proprietary products be registered with EGLE prior to installation and would prescribe the application and review process for registrations.

The bill would establish evaluation requirements for onsite wastewater treatment systems that would generally require systems to be evaluated every 10 years with additional evaluation requirements based on system age, proximity to environmental features, changes in use, and other risk factors. Individuals who conduct evaluations would have to be registered with EGLE and would have to meet certain training requirements. The bill would prescribe civil fines for failing to obtain evaluations, complete corrective actions, or for noncompliance and criminal penalties for fraudulent behavior. The bill would create the Onsite Wastewater Treatment System Administration Fund and the Public Education and Training Fund and require the bill's fees and fines to be deposited into the funds to be spent on appropriation for program management, grants to local health departments, data management, and public education and outreach, among other things.

The bill would take effect 90 days after its enactment.

BRIEF FISCAL IMPACT

The bill 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 bill would partially offset these expenditures but are not expected to fully offset the costs to implement and administer the bill, meaning that the bill likely would require additional appropriations.

MCL 333.12751 et al.

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CONTENT

The bill 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.
- Specify that local health departments would have to implement and enforce Part 127 (Water Supply and Sewer Systems) and Part 128 and allow local health departments to perform investigations to ensure compliance.
- Within three years of the bill's effective date, require EGLE to establish rules for a Statewide Sewage Code for onsite wastewater systems that included baseline public health and environmental protections.
- Require authorized local health departments to implement and enforce regulations for conventional and alternative onsite wastewater treatment systems.
- Require a person to obtain from EGLE or an authorized health department a construction permit before installing, constructing, altering, extending, repairing, or replacing an onsite wastewater treatment system.
- Beginning 45 days after EGLE promulgated rules that established the Statewide Sewage Code, 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 propriety product.
- Allow EGLE to charge \$3,000 to cover application and reviewal costs and allow the fee to be adjusted by the Detroit Consumer Price Index every three years.
- Create the Technical Advisory Committee to advise EGLE on standards for onsite wastewater treatment systems and prescribe its duties and membership.
- Prescribe a misdemeanor penalty punishable by up to one year's imprisonment or a maximum fine of \$10,000, or both, for intentionally providing fraudulent information to EGLE related to onsite wastewater treatment systems.
- Beginning 45 days after EGLE established rules for the Statewide Sewage Code, require onsite wastewater treatment systems to be evaluated every 10 years and specify additional conditions that would trigger an evaluation.
- Specify the conditions under which a local health department could exempt a system from a subsequent evaluation.
- Require an evaluation be conducted within 90 days after the owner of an onsite wastewater treatment system arranged for the evaluation.
- Prohibit an owner of a system from having septic tanks or tanks pumped within 45 days before an evaluation.
- Allow an authorized local health department to request from EGLE an extension to the evaluation timeline and prescribe the factors that EGLE could consider in granting or denying the extension request, such as staffing or funding factors.
- Require an individual who conducted an evaluation to submit an evaluation report to the owner of the system and to the authorized local health department.
- Within 21 days of receiving an evaluation report, require an authorized local health department to review the report and determine if the system were in failure and if any corrective action were necessary, among other things.
- Prescribe civil fines of up to \$15,000 for an individual who failed to arrange an evaluation or failed to complete corrective actions and allow the Attorney General to bring an action to collect certain fines or remedy failures.
- Allow EGLE to waive fines for individual system owners who had an income at or below 400% of the Federal Poverty Guidelines.

- **Require individuals who conduct evaluations to be registered and meet certain training requirements established by the Statewide Sewage Code and allow EGLE to charge an \$180 application fee.**
- **Prescribe the process for EGLE to audit evaluation reports and the conditions under which EGLE could suspend, revoke, or deny an evaluator's registration.**
- **Ten years after the bill's effective date, require EGLE to submit a report to the Legislature and the Governor that analyzed the results of the implementation of the Statewide Sewage Code and areas that needed improvement.**
- **Require EGLE to make available and maintain an onsite wastewater treatment system database that included information on evaluation and relevant data.**
- **Prescribe criminal and civil penalties for noncompliance with Parts 127 and 128 and the Statewide Sewage Code.**
- **Require local point-of-sale ordinances to be consistent with or more stringent than Part 128 and prohibit them from interfering in property title transfer.**
- **Create certain funds in the Department of Treasury and require fines and fees under the bill to be deposited into them.**

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to Senate Bills 299 and 300 of the 2023-2024 Legislature taken together. Senate Bills 299 and 300 passed the Senate and were referred to the House Committee on Government Operations but received no further action.

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Onsite Wastewater Systems, Generally

Under the bill, "onsite wastewater treatment system" or "system" would mean a system of components and appurtenances, also referred to as a septic system, septic tank disposal system, sewage system, sewage disposal system, or subsurface sewage disposal system that is used, or intended to be used to collect, hold, and treat fewer than 10,000 gallons per day of sanitary sewage through one of the following methods:

- Subsurface discharge to a soil dispersal system.
- Subsurface discharge to another system that meets the requirements described under Statewide Sewage Code.
- A holding tank, outhouse, innovative system, or other component that collects and stores sanitary sewage until being transported to an approved location for the necessary final dispersal or final treatment.

"Septic tank" would mean a watertight, covered receptacle for collection and treatment of sanitary sewage that does all the following: a) receives the discharge of sanitary sewage; b) separates settleable and floating solids from the liquid; c) digests organic matter by anaerobic bacterial action; d) stores digested solids through a period of detention; e) allows clarified liquid effluent to discharge for additional treatment by components and appurtenances, such as a soil dispersal system; and f) attenuates flows.

"Sanitary sewage" would mean treated or untreated waste that contains Feces or other excreta from the human body, waste generated as a result of food service establishment activities, or waste generated from sanitary conveniences, including, but not limited to, toilets, urinals, sinks, showers, bathtubs, dishwashers, garbage grinders, and household laundry fixtures available for use associated with office, industrial, commercial, recreational, institutional, or other purposes. The term would not include roof runoff, building footing drain, waste from industrial or commercial processes, and stormwater.

"Soil dispersal system" would mean a method in which septic tank effluent or treated effluent is distributed by a network of piping or other approved material to an approved method of subsurface dispersal. "Effluent" would mean liquid flowing out of a component or device.

"Holding tank" would mean a system that uses all the following to collect sanitary sewage:

- A septic tank with no outlet and that does not allow clarified liquid effluent to discharge for additional treatment by a soil dispersal system.
- The services of a person engaged in septage waste servicing.
- Offsite disposal treatment at approved locations in accordance with Part 117 (Septage Waste Surfaces) of NREPA.

"Outhouse" would mean a building or other structure not connected with a sewer system or with a properly installed and operated sewage disposal system used for the reception, disposition, or storage, either temporarily or permanently, of feces or other excreta of the human body.

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*. The bill specifies that onsite wastewater treatment systems would be recognized as a cost-effective, long-term option for meeting public health and water quality goals when the onsite wastewater system was properly managed. A system that was not properly managed would be considered a failure or potential failure. Additionally, a system that was a failure or potential failure could be considered to constitute a nuisance.

"Management" would mean the siting, design, permitting, construction, installation, inspection, operation, maintenance, alteration, evaluation, rejuvenation, closure, and repair of onsite wastewater treatment systems to ensure that onsite wastewater treatment systems meet required performance standards established in the Statewide Sewage Code that are protective of public health and the environment. "Maintenance" would mean routine or periodic action taken to ensure proper system performance, extend system longevity, and ensure a system meets performance requirements as designed, including servicing the system through cleaning, septic tank pumping, effluent filter cleaning or replacements, flushing laterals, vegetation removal, effluent sampling if applicable, adjustments to subcomponents, and other actions as recommended by a product manufacturer and in accordance with the statewide sewage code.

"Failure" would mean a malfunction or condition of an onsite wastewater treatment system that consists of at least one of the following, as determined by an authorized local health department:

- A discharge of sanitary sewage to the surface of the ground.
- A discharge of sanitary sewage or effluent into surface water, storm drains, 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 a structure.
- A structural failure or leaking of a septic tank or tanks or other associated component or appurtenance.
- A discharge of treated wastewater that does not comply with acceptable standards established in the Statewide Sewage Code.
- An illicit connection or illicit discharge.^{1,2}
- An absence of all or a key part of an onsite wastewater treatment system as determined by the Statewide Sewage Code.
- The discharge of sanitary sewage or effluent is endangering a public or private water supply.
- The inability to access key parts of the onsite water treatment system.
- The authorized local health department determines that the elements of a nonconforming system contribute to the overall failure of the system in accordance with the Statewide Sewage Code.

¹"Illicit connection" would mean a physical, constructed connection that allows the bypassing of required treatment by an onsite wastewater system in violation of law.

² "Illicit discharge" would mean any direct or indirect discharge of sanitary sewage in violation of law.

"Element of a nonconforming system" would mean the presence of at least one of the following that may, as determined by an authorized local health department, lead to a failure or improper functioning of the onsite wastewater treatment system:

- Evidence of compaction or settling in the area of the onsite wastewater treatment system that limits drainage in the area of the system on the parcel, and rain and snow melt cannot percolate through the system.
- The soil dispersal system is hydraulically saturated.
- Evidence of missing or damaged appurtenances of the onsite wastewater treatment system.
- Excessive biomatting is noted in two or more core samples performed across the soil dispersal system that indicates that the soil is no longer accepting effluent at a sufficient rate of infiltration.
- Evidence of sustained operating levels within the septic tank above the invert of the septic tank outlet.
- The system includes a proprietary product or nonproprietary technology that meets the definition of an alternative system but that was not included in the construction permit.
- The system is located too close to a drinking water supply well or surface waters as determined by the Statewide Sewage Code.
- The system has insufficient soil depth below the soil dispersal system to provide adequate wastewater treatment before dispersal to the groundwater.
- Other conditions that may reasonably be expected to alter the intended functionality of the onsite wastewater treatment system.

Enforcement of Part 127 and Part 128

The bill would require local health departments to implement and enforce Part 127 (Water Supply and Sewer Systems) and Part 128 and rules promulgated under Part 128 pursuant to Code. Unless otherwise delegated, the implementation and enforcement would not apply to Sections 12753, 12754, and 12756 of the Public Health Code, which generally pertain to requirements and enforcement of the public connection of a building in which toilet, kitchen, laundry, bathing, or other facilities which generate water-carried sanitary sewage are used or are available for use for household, commercial, industrial, or other purposes (structure in which sanitary sewage originates). ("Public sanitary sewage sewer system" means a sanitary sewer or a combined sanitary and storm sewer used or intended for use by the public for the collection and transportation of sanitary sewage for treatment or disposal.)

Onsite wastewater treatment systems and premises and structures that were not connected to a public sanitary sewer system would be subject to regulation under Part 128.

All the following would be subject to Parts 127 and 128:

- A premises or structure.
- An outhouse.
- An innovated wastewater treatment system (see Alternative and Innovated Waste Systems; Generally).
- An onsite wastewater treatment system.
- The owner of or a person that was responsible for any of the items described above.

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

The Public Health Code also requires EGLE to govern the construction and maintenance of outhouses to safeguard public health and the spread of disease or contamination. The bill specifies that the Statewide Sewage Code described below would supersede a health department's rules.

Statewide Sewage Code

Within three years of the bill's effective date, EGLE, in consultation with the Technical Advisory Committee, would have to promulgate rules that established a Statewide Sewage Code (see Technical Advisory Committee). The Statewide Sewage Code would have to comply with the Public Health Code's requirements for public sanitary sewage and the bill's provisions; it also would have to contain provisions for the management of onsite wastewater treatment systems and performance-based standards for systems categorized as conventional and alternative onsite wastewater treatment systems and provide baseline protection for public health and the environment. The Statewide Sewage Code would have to include all the following provisions:

- Qualifications of any person involved in the installation and management of onsite wastewater treatment systems.
- Standards for onsite wastewater treatment systems products, components, and devices.
- Standards for the installation of onsite wastewater treatment systems.
- Standards for wastewater effluent.
- Standards for the continued use of an onsite wastewater treatment system.
- Criteria for granting variances for inspections and onsite evaluations.
- Any other requirement necessary to implement and carry out Parts 127 and 128.

"Conventional system" would mean a category of onsite wastewater treatment system that contains a watertight septic tank and soil dispersal system that depends solely on subsurface soil for treatment and dispersal and does not include any components of an approved alternative technology.

"Alternative system" would mean a category of onsite wastewater treatment systems that are not conventional systems and that provide for an equivalent or better degree of protection for public health and the environment than a conventional system.

Administration of Conventional Systems

The bill would require a local health department to create a plan to administer Parts 127 and 128 for the management of conventional systems and submit the plan to EGLE for authorization within 180 days after EGLE promulgated rules to establish a Statewide Sewage Code. Within 120 days of receiving the plan, EGLE would have to review the plan to ensure that it conformed to the Statewide Sewage Code's requirements and provide corrective guidance as necessary and authorize the local health department to administer Part 128 for conventional systems.

The bill would require a local health department to follow the standards established under Parts 127 and 128 for the purpose of carrying out each Part's responsibilities and the Statewide Sewage Code, including authority for all the following:

- Conducting preconstruction site evaluations, issuing construction permits, ensuring installations were performed by qualified individuals, as specified in the Statewide Sewage Code, and performing interim inspections during construction and final inspections on completion of construction, if required.

- Issuing notices and penalties for violations of Parts 127 and 128, the rules promulgated under those Parts, or the Statewide Sewage Code, or for endangering public health or the environment.
- Responding to complaints of failure of an onsite wastewater treatment system or improper discharge of sanitary sewage.
- Ensuring long-term maintenance of onsite wastewater treatment systems through construction permit requirements or the issuance of operating permits, if applicable, for the management of an onsite wastewater treatment system as described in the Statewide Sewage Code.
- Conducting onsite evaluations, as applicable.
- Reviewing variances in accordance with the Statewide Sewage Code.

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

Conventional System Regulation

A local health department would have to maintain qualified staff to administer a Conventional Wastewater Treatment System Program. Staff members would have to meet the following educational and training requirements to work independently in the Program:

- Possess a minimum of a 4-year bachelor of science or arts degree with a major in environmental health, chemistry, biology, geology, engineering, or an equivalent degree or meet the educational eligibility requirements for the registered environmental health specialist or registered sanitarian credential exam.
- Obtain a minimum of eight hours of training that included at least four hours of field training on the United States Department of Agriculture soil classification system from EGLE or an EGLE approved entity.
- Demonstrate competency and understanding of the Statewide Sewage Code, criteria for onsite wastewater treatment systems provided in State law and rules, or any successor State law and rules, the Land Division Act and the Condominium Act.^{3,4}
- Conduct at least 10 supervised preconstruction field or site evaluations of conventional onsite wastewater system designs and 10 supervised final inspections with senior staff or a supervisor.
- Conduct at least five solo preconstruction field evaluations of onsite wastewater system designs and five solo final inspections demonstrating understanding of the Program as determined by senior staff or a supervisor.
- Attend and observe at least two complete onsite wastewater system installations.

A staff member of an authorized local health department that had worked independently in an onsite wastewater treatment system program for at least three years before EGLE established the Statewide Sewage Code rules and had demonstrated competency and knowledge of onsite wastewater treatment systems would be exempt from the educational and training requirements described above. Additionally, a staff member that had limited

³ Generally, the Land Division Act promulgates rules regarding land proposed for division and includes the adequacy of sewage disposal in such determinations, among other things.

⁴ The Condominium Act prescribes procedures for the creation and operation of condominiums and includes requirements for complying with environmental health rules including sewage disposal, among other things.

duties within the Program, had demonstrated competency and knowledge, and was overseen by a sanitarian in accordance with the Statewide Sewage Code rules would also be exempt.⁵

An authorized local health department or EGLE would have to add a \$5 Public Education and Training Fund Fee to application fees. Fees would have to be forwarded to EGLE quarterly and deposited as described under Public Education and Training Fund.

Alternative and Innovated Waste Systems; Generally

Generally, the Public Health Code prescribes the process for which an individual may install and use acceptable innovated or alternative waste treatment system in combination with a system for the treatment and disposal of waste water which normally does not receive human body waste or industrial waste and is approved by a local health department. (acceptable greywater system) subject to health department regulations, inspections, and certain fees.

Currently, "acceptable innovative or alternative waste system" means a decentralized or individual waste system that has been approved for use by a local health department and which is properly operated and maintained so as to not cause a health hazard or nuisance. An acceptable innovative or alternative waste treatment system may include an organic waste treatment system or compost toilet which operates on the principle of decomposition of heterogeneous organic material by aerobic and facultatively anaerobic organisms and uses an effective aerobic composting process which produces a stabilized humus. The term does not include a tank drain field system or any other system which is determined by EGLE to post a similar threat to public health, safety, and welfare and the quality of surface and substrate waters of the State.

The bill would redefine this type of system as "acceptable innovative waste treatment system" and would modify the definition to mean a class of alternative waste treatment systems that are approved for use by a local health department and are properly operated and maintained so as to not cause a health hazard or nuisance. The term could include an organic waste treatment system or compost toilet that operated on the principle of decomposition of feces or other excreta from the human body by aerobic and facultatively anaerobic organisms and utilizes an effective aerobic composting process which produces a stabilized humus. The term would not include a tank and soil dispersal system or any other system that was determined by EGLE to post a threat to public health, safety, and welfare and the quality of surface and substrate waters of the State.

The bill would modify references under Part 127 to "acceptable innovative or alternative waste treatment system" to instead refer to "acceptable innovative waste treatment system.

Additionally, the bill would require health department regulation of acceptable innovated waste systems to be subject to the Statewide Sewage Code.

Alternative System Regulations

Within 180 days after EGLE promulgated rules to establish the Statewide Sewage Code, a local health department would have to create a plan to administer Parts 127 and 128 for the management of *alternative systems* and submit the plan to EGLE for authorization. Within 120 days after receiving the plan, EGLE would have to review the plan to ensure the plan conformed to the requirements in the Statewide Sewage Code, provide corrective guidance

⁵ "Sanitarian" would mean an individual who has specialized education and experience in the physical, biological, and sanitary sciences as applied to the educational, investigational, and technical duties in the field of environmental health.

as necessary, and authorize the local health department to administer Part 128 for alternative systems. Within two years of EGLE establishing rules for the Statewide Sewage Code, the local health department would have to implement the approved plan to administer this part for alternative systems. The local health department would have to meet the requirements set for conventional systems and follow the standards established under Part 128, in accordance with a local health department's authority to perform necessary actions under the Code, for the purpose of carrying out the responsibilities 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 as described under Construction Permits.
- Ensure long-term maintenance of alternative systems through the issuance of operating permits after an operation and maintenance evaluation determined compliance.

Existing local health department regulations or guidance for a particular type of alternative system would remain in effect until minimum standards and criteria for that type of system were developed by the EGLE.

An authorized 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 all the following conditions were met:

- The alternative system used a proprietary product that was registered for use by EGLE or used nonproprietary technology in accordance with the standards and guidance provided by EGLE in accordance with the Statewide Sewage Code.
- The soils, site conditions, and operating conditions at the location were appropriate for the use of the alternative system in compliance with the Statewide Sewage Code.
- An acceptable management plan was developed and included operation and maintenance evaluations, in accordance with the Statewide Sewage Code.

The bill would include a definition of "experimental onsite wastewater treatment system" which would mean a class of alternative onsite wastewater treatment system that is in experimental use and requires further testing in order to provide sufficient information to determine its acceptability.

Compliance Inspections

The bill would allow EGLE or local health departments to conduct or authorize inspections, evaluations, or investigations as necessary to ensure compliance with Parts 127 and 128. The right for a local health department to inspect or investigate any matter, thing, premise, place, person, record, vehicle, or event to assure compliance with laws enforced by local health departments would apply to EGLE and a local health department utilized by Parts 127 and 128. The rights and responsibilities pertaining to the Department of Health and Human Services (DHHS) obtaining a warrant under the Code would apply also to EGLE or a local health department when utilized in accordance with Parts 127 and 128.

At any reasonable time, an authorized representative of EGLE or a local health department could enter private or public property to inspect or investigate conditions or practices that could be invitation of Parts 127 and 128. An investigation would have to comply with the United States Constitution and the State Constitution of 1963.

Failure to comply with inspection or investigation requests would be subject to further enforcement action including when necessary referral to the Department of Attorney General. Additionally, the owner of an onsite wastewater treatment system would be responsible to respond and remedy nuisance or conditions that meet a failure in compliance under Parts 127 and 128, and the rules promulgated by EGLE as described under Statewide Sewage Code described below.

General Departmental Guidance for Permitting

The bill would require EGLE to develop minimum standards and criteria to assist local health departments in permitting different types of onsite wastewater treatment systems, including the following 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.
- Systems that had not been installed or constructed but for which a construction permit was issued by the local health department before the Statewide Sewage Code's effective date.

"Nonproprietary technology" would mean a wastewater treatment or distribution technology, method, or product not subject to patent or trademark. "Proprietary product" would mean a treatment or distribution product held under a 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, extend, repair, or replace an onsite wastewater treatment system unless the person received a construction permit from the authorized local health department, and EGLE when applicable, subject to any permit required under Part 31 (Water Resources Protection) or Part 41 (Sewerage Systems) of NREPA. A person would not need a construction permit to conduct maintenance on or for a minor repair to an onsite wastewater treatment system that could be managed as described in the rules promulgated by the Statewide Sewage Code.

"Minor repair" would mean the act of fixing or replacing substandard or damaged subcomponents, such as septic tank access lids, safety devices, risers, septic tank outlet baffle or outlet devices, switches, solid piping located outside the soil dispersal system, pumps, valves, and other subcomponents as determined in accordance with the Statewide Sewage Code. "Baffle" would mean a precast or preconstructed component of a septic tank that serves to redirect, divert, or impede the flow of wastewater through the septic tank in a beneficial manner. "Outlet device" would mean any fixture on or around the outlet pipe of a septic tank that serves to slow down, divert, screen, or otherwise control the flow of effluent out of the septic tank.

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 and construct the system in accordance with the Statewide Sewage Code. A person that failed to obtain a construction permit or comply with Parts 127 and 128 would be subject to enforcement action by the local health department as described under Violations.

A governmental entity with building code authority could not issue a building permit for a structure, residence, or facility served, or intended to be served, by an onsite wastewater treatment system unless one of the following was obtained from the authorized local health department:

- A construction permit for the onsite wastewater treatment system.
- An authorization for the continued use of the onsite wastewater treatment system.
- An authorization for a change in use or an increase in use of the existing onsite wastewater treatment system.

"Change in use" or "increase in use" would mean a new or increased use of State groundwater for the disposal of sanitary sewage through an onsite wastewater treatment system through at least one of the following:

- Connection of a new structure to an existing onsite wastewater treatment system.
- Increase in use of the structure resulting in an increased sanitary sewage flow rate that exceeds the system design capacity.
- Change in purpose for which a structure or portion of a structure is utilized or occupied between residential, nonresidential, or another type of nonresidential use or occupancy. Increase in the wastewater effluent strength.
- Any other change or increase in use that could reasonably be expected to affect the ability of the onsite wastewater treatment system to function as intended or perform as designed.

A governmental entity with building code authority could not issue a certificate of occupancy for a structure, residence, or facility served by an onsite wastewater treatment system without an approved final inspection report issued by the authorized local health department or an authorization was obtained for continued use or a change in use described above.

A governmental entity with building code authority that issued a building permit or certificate of occupancy without obtaining a permit or authorization or an approved final inspection report could be subject to an enforcement action by the Department of Licensing and Regulatory Affairs (LARA). Under the bill, LARA's actions could include enforcement actions against a building official or inspector as provided under the Skilled Trades Regulation Act.⁶

Proprietary Products Registration

Beginning 45 days after the EGLE promulgated rules to establish the Statewide Sewage Code, a person would be prohibited from installing, constructing, altering, or repairing a proprietary product unless that product was 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 Wastewater Treatment System Administrative Fund (see Wastewater Treatment System Administrative Fund).

Within 30 days after receipt of an application and fee, EGLE would have to review the application and determine it was administratively complete. Within 60 days after 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 a proprietary product for use in the State, EGLE would have to consider the recommended standards and guidance provided

⁶ The Skilled Trades Regulation Act requires the Construction Code Commission to enforce the Construction Code and revoke or suspend registrations for noncompliance.

by the Technical Advisory Committee (see Technical Advisory Committee below). Registration of a proprietary product would be specific to a product model within a brand or manufacturer's line and would be valid for five years. Registration would have to be renewed in the same manner as an initial registration.

Beginning three years after the bill's effective date, and once every following three years, EGLE would have to adjust the registration fee by an amount determined by the State Treasurer at the end of the preceding fiscal year to reflect the cumulative percentage change in the Detroit Consumer Price Index and rounded to the nearest \$100.⁷

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

- The registration was obtained or was 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, conducted in accordance with the Statewide Sewage Code, determined that the proprietary product did function or perform as designed.
- The proprietary product failed to meet the requirements of the Statewide Sewage Code.

An owner of an onsite wastewater treatment system would not need to register a proprietary product if the proprietary product were installed as part of the construction of an approved onsite wastewater treatment system before the bill's effective date and if the authorized local health department determined the continued use of the proprietary product could be managed in accordance with the Statewide Sewage Code.

The registration requirements would apply to a person that represented a proprietary product manufacturer that was applying for registration of a proprietary product before an installation that occurred after the bill's effective date.

Technical Advisory Committee

The bill would create the Technical Advisory Committee within EGLE to advise and provide recommendations to EGLE regarding the rules promulgated for the Statewide Sewage Code. The Technical Advisory Committee could advise EGLE on all the following:

- Recommended standards and guidance for the management of onsite wastewater treatment systems.
- Nonproprietary technologies and recommended standards and guidance for the use of nonproprietary technologies.
- 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 and the severity of a failure of a system.
- Onsite wastewater treatment system evaluation elements and reporting.
- Registration, training, and educational requirements for evaluators and other individuals involved in the installation, maintenance, and evaluation of onsite wastewater treatment

⁷ "Detroit Consumer Price Index" would mean means the most comprehensive index of consumer prices available for the Detroit-Warren-Dearborn area from the Bureau of Labor Statistics of the United States Department of Labor.

systems that were consistent with trainings established by professional organizations representing decentralized wastewater management professionals recognized by EGLE or an EGLE-approved entity.

- Ethical standards for evaluators and other individuals involved in the installation, maintenance, and evaluation of onsite wastewater treatment systems that were consistent with the ethical standards established by professional organizations that represented decentralized wastewater management professionals recognized by EGLE.
- Documentation required to be submitted to EGLE for qualifying and registering evaluators.
- Qualifications of individuals other than evaluators involved in the management of onsite wastewater treatment systems.
- Continuing education requirements for individuals involved in the management of onsite wastewater treatment systems.
- Recommended standards for implementing Part 128.
- Guidance and standards for registering practitioners that constructed and maintained onsite wastewater treatment systems.
- Recommended standards and guidance for owners of onsite wastewater treatment systems for the maintenance of those systems.
- Recommended requirements for safety devices, including standards for safety devices for septic tanks that were installed or altered before the bill's effective date.
- Recommended standards for septic tank access risers that extended to the ground surface.

The Committee could also advise EGLE on proposed conflict-of-interest system for evaluators and individuals who installed, constructed, altered, or repaired onsite wastewater treatment systems. The conflict-of-interest system could not preclude evaluators from owning businesses involved in the installation, construction, alteration, or repair of onsite wastewater treatment systems and would have to provide a means for an evaluator or other individual to perform the services that could result from an evaluation.

Additionally, the Committee could provide advice on recommended requirements for evaluations that were in addition to the evaluation requirements imposed under Evaluations, including all the following:

- Standard operating procedures to determine septic tank pumping requirements at the time of an evaluation and, if a septic tank were pumped out, within 45 days before an evaluation.
- Standard operating procedures for an evaluation conducted if compaction could limit drainage, if a structure were not occupied or in ordinary use, if the ground were frozen or snow covered, and if access to the onsite wastewater treatment system were not feasible.
- Tests and procedures for evaluators to perform to ensure the validity of onsite wastewater treatment system evaluations.

Finally, the Committee could advise EGLE on proposed criteria for allowing the continued use of an onsite wastewater treatment system that was constructed before the effective date of the Statewide Sewage Code if the use of an onsite wastewater treatment system could be managed in a manner that ensured an effective level of treatment of sanitary sewage determined to be necessary based on risk and protected public health and the environment, State surface waters, and groundwater quality.

The Committee's initial advice and recommendations could be provided to EGLE within two years after the bill's effective date. Also, EGLE would have to provide administrative support to the Committee.

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 confirmed the product or technology functions when installed onsite 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, which could include a) hydrogeologists with hydrogeology field experience; b) microbiologists; c) other scientists or academics; d) onsite wastewater treatment systems product manufacturers; e) individuals whose premises or structure was served by an approved onsite wastewater treatment system; f) environmental organizations; g) financial organizations; h) home builders; i) real estate licensees; j) local units of government; and k) conservation districts.

Committee Membership

The Committee would have to consist of fifteen members who had technical or scientific knowledge applicable to onsite wastewater treatment systems including one nonvoting member who was a representative of EGLE appointed by the EGLE director and the following six voting members:

- Four regional local health department representatives each representing either the northern Lower Peninsula, southeast Lower Peninsula, southwest Lower Peninsula, or the Upper Peninsula, recommended by a State organization representing local health department and appointed by EGLE.
- One member appointed by the Speaker of the House of Representatives.
- One member appointed by the Senate Majority Leader.

The Governor would have to appoint the remaining eight voting members as follows:

- One professional engineer.
- One distributor or supplier of onsite system products and devices.
- One onsite wastewater system installer who had completed training developed by the National Onsite Wastewater Recycling Association or other professional organization that represented decentralized wastewater management professionals recognized by EGLE.
- One onsite wastewater system service provider that represented septage waste servicing business licensed under Part 117 of NREPA.
- One individual with knowledge of the use of onsite wastewater treatment systems representing users of those systems.
- One representative from a State organization specializing in the protection of public health and the environment through improved water quality.
- One individual who had performed at least 10 evaluations under preexisting onsite wastewater treatment system ordinances or regulations.
- One soil scientist or academic representative specializing in soil science.

The members first appointed to the Committee would have to be appointed within 90 days of the bill's effective date. Six of those members would be appointed to serve two-year terms

and eight would serve three-year terms. The remaining appointed members would serve four-year terms.

If a vacancy occurred on the Committee, an individual would have to be appointed in the same manner as the original appointment to fill the vacancy for the balance of the term. 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 official duties.

Committee Meetings

The Governor would have to call the first meeting of the Committee within 120 days of the bill's effective date. At the first meeting, the Committee would have to create a charter or bylaws, which would have to include the amount of and frequency at which the Committee would have to meet, as it considered necessary or appropriate. Additionally, the Committee would have to meet if requested by EGLE.

Seven of the members of the Committee would constitute a quorum for the transaction of business at a Committee meeting. A majority of the members present and serving would be required for the Committee to take an official action. A Committee meeting could be conducted in whole or in part electronically by telephonic or video conferencing with remote participation.

The Committee would be subject to the Freedom of Information Act.

Penalties for Fraud

Under the bill, a person that submitted or provided to EGLE or an authorized local health department false, misleading, or fabricated information related to an onsite wastewater treatment system or who fraudulently completed an onsite wastewater treatment system evaluation for compliance without being an evaluator 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.

Evaluations

Beginning 45 days after EGLE established the Statewide Sewage Code, an owner of a premises or structure in which sanitary sewage originated that was not connected to a public sanitary sewer system operated by a local unit of government, would have to obtain an onsite wastewater treatment system evaluation from an authorized local health department or evaluator in accordance with the schedule described below, as applicable to that system. The evaluation requirements would apply to an evaluation conducted under a point-of-sale ordinance or regulation described under Point of Sale Ordinance.

A wastewater treatment system that was 20 years old, or older before the bill's effective date would have to be evaluated by an authorized local health department or evaluator within 10 years of EGLE promulgated rules to establish the Statewide Sewage code if at least one of the following conditions existed:

- The onsite wastewater treatment system was installed within 500 feet of any surface water or within a high risk erosion area, critical dune, or 100-year floodplain, as these terms were defined by EGLE.

- A local health department or EGLE did not have a record of a construction permit being issued for the installation of an onsite wastewater treatment system.

An authorized local health department or evaluator also would have to perform an evaluation in accordance with the following conditions:

- Before a change in use or an increase in use of the existing onsite wastewater treatment system.
- Any time in accordance with the Statewide Sewage Code.
- Any time, if the evaluation were arranged or allowed by the real property owner of a premises or structure.
- Within 10 years after EGLE promulgated rules to establish the Statewide Sewage Code, if the onsite wastewater treatment system were 30 years old or older on or before the bill's effective date.

After the first evaluation, an onsite wastewater treatment system would have to be evaluated once every 10 years. Subject to the Statewide Sewage Code, after the first evaluation, a local health department could determine that an onsite wastewater treatment system did not require a subsequent evaluation if an approved onsite wastewater treatment system was installed or corrective action, remedy, or management steps were completed on the existing system. An owner of a premises or structure not connected to a public sanitary sewer that did not arrange for an evaluation would not be excluded from the requirement to arrange for an evaluation.

Beginning 10 years after the EGLE promulgated rules to establish the State Sewage Code, an onsite wastewater treatment system would have to be evaluated every 10 years if the system were 30 years old or older, or if an evaluation were not conducted and the system was 20 years old or older and was installed within 500 feet of surface water or within a high-risk erosion area, critical dune, or 100-year floodplain, as these terms were determined by EGLE.

In accordance with the Statewide Sewage Code, if determined necessary by the EGLE and on request of an owner of an onsite wastewater treatment system EGLE could grant a variance from the onsite wastewater treatment system evaluation requirements.

Evaluation Timeline Extensions

Within 10 years after EGLE promulgated rules to establish the State Sewage Code, a local health department could submit an application on a form and in a manner prescribed by EGLE to request an extension to the evaluation timeline requirements. Within 60 days of receiving an evaluation extension request, EGLE would have to grant or deny the extension. If EGLE denied the extension request, EGLE would have to state the reasons for the denial in writing. An extension would be valid for one year. A local health department could apply for a subsequent extension in the same manner as an initial extension but could only apply for two total extensions. Under the bill, EGLE would have to consider all the following when determining whether to grant an extension:

- Documented lack of adequate funding to conduct evaluations including information on the financial standing of the local health department and efforts made to raise funding, including charging a fee to conduct evaluations as described below.
- Documented lack of adequate evaluator or local public health qualified staff to complete evaluations despite documented efforts to hire needed staff.
- Documented inability to successfully complete the evaluations.

Evaluation Fees

The bill would allow an authorized local health department or evaluator to charge a fee for conducting an evaluation. An authorized local health department could charge a reasonable fee not to exceed the costs of conducting, administering, and reviewing onsite wastewater treatment system evaluations.

Additionally, an authorized local health department or evaluator, as applicable, would have to charge a \$50 State administrative fee. An evaluator would have to submit the administrative fee to EGLE when submitting an evaluation report. The State administrative fees collected by a local health department would have to be forwarded to EGLE on a quarterly basis. Beginning three years after the Statewide Sewage Code's effective date, and every following three years EGLE would have to adjust the State Administrative Fee by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Consumer Price Index.⁸

Evaluation Checklist

An authorized local health department or evaluator would have to conduct an onsite wastewater treatment system evaluation within 90 days after the owner of the system arranged for the evaluation. The individual conducting the evaluation could work with individuals who were involved in the management of onsite wastewater treatment systems, in accordance with the Statewide Sewage Code, to complete an evaluation. The owner of the system could not have the septic tank or tanks pumped out within 45 days before an onsite wastewater treatment system evaluation. The bill specifies that at the onsite wastewater treatment system evaluation, the authorized local health department or evaluator would have to do all the following:

- Identify the size, age, and visible condition of the septic tank or tanks.
- Before conducting any pumping, document the level of effluent, in relation to the operating level in the septic tank or tanks.
- Verify that all sanitary sewage-related plumbing fixtures were connected to the septic tank or tanks and are operational and identify any sources of nonsanitary sewage-related connections to the septic tank or tanks or the soil dispersal system that require disconnection.
- Locate, expose, open, and assess the septic tank or tanks and pumping chambers associated with the system; however, if the lid of any septic tank or pumping chamber were greater than 12 inches below the ground surface, the health department or evaluator could require that the property owner uncover the lid or lids for ease of access.
- To the extent reasonable, locate, determine the size of, and observe the subsurface dispersal system to determine its condition.
- Document the location in relation to the site of any attributes including drinking water wells, surface water, and other setbacks as required by the Statewide Sewage Code.
- Observe or find information regarding the location of a well and assess the approximate distance between the nearest well and the onsite wastewater treatment system, if applicable.⁹
- Observe the general area that included the treatment and dispersal system for evidence of system failure or elements of a nonconforming system.

⁸ "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

⁹ "Well" would mean an opening in the surface of the earth for the purpose of removing fresh water or a test well, recharge well, waste disposal well, or a well used temporarily for dewatering purposes during construction.

- Examine the premises for an illicit discharge to the surface of the ground, surface water, groundwater, or drain.
- Document conditions observed, evidence of failure, and elements of a nonconforming system.
- Assess and report the ponding level found in inspection or observation ports located in the soil dispersal system; however, if inspection or observation ports were not found, or did not penetrate to the bottom of the soil dispersal system, collect at least two core samples across the soil dispersal system.
- Estimate the current daily sanitary sewage flow, identify structure use type, and identity and collect information on the proposed new or increase in use.
- Complete any other evaluation criteria set by the Statewide Sewage Code.
- Prepare an evaluation report that contained the information gathered from the requirements above, including appropriate photographic documentation taken at the evaluated premises.

"Operating level" would mean the elevation of effluent in a tank. For a septic tank, operating level would be determined by the invert of the outlet piping.

The individual conducting the evaluation also would have to document the level of scum and sludge by measuring the vertical column depth of each layer of stratified septic tank contents for each tank or compartment and arrange for the services of a septage waste servicing business licensed under Part 117 of NREPA to pump out the septic tank or tanks, or recommend to the authorized local health department that the septic tank or tanks be pumped out, if one of the following applied:

- The individual conducting the evaluation determined that it was necessary to complete the evaluation.
- The sludge and scum accumulations within the septic tank or tanks exceeded 30% of each individual tank's volume or are encroaching on the inlet or outlet.

Additionally, if the system included an alternative system or proprietary product, the individual conducting the evaluation would have to identify that the required operation and maintenance reporting were on file with the EGLE or authorized local health department. If the operation and maintenance reporting were not up to date, the individual conducting the evaluation would have to notify the owner of the system of the need to arrange for the required operation and maintenance by a qualified service provider, subject to the Statewide Sewage Code, and report the findings to the authorized local health department. The authorized local health department or evaluator would have to assess and report any unresolved issues identified in the required operation and maintenance report.

Evaluation Report

Within 14 days after the onsite wastewater treatment system evaluation was completed, the individual that conducted the evaluation would have to prepare an evaluation report that detailed the findings of the system evaluation. The report would have to be an objective and fact-based summary of the conditions observed on site at the time of the evaluation and would have to contain information that followed the standard report forms prescribed by EGLE. The evaluation report could contain recommendations to extend the life of the onsite wastewater treatment system and prevent premature failures of the system.

Also, the evaluator would have to provide the owner of the system with a printed or electronic copy of the report and provide an electronic copy to the authorized local health department. An evaluation report would have to be provided even if the report were incomplete or the fee to conduct the evaluation was not paid as described below. Additionally, the evaluator would

have to provide the owner of a system a copy of the minimum evaluation standards and criteria.

Evaluation Review

The bill would require an evaluation completed by an evaluator to be reviewed by the authorized local health department. The authorized local health department would have to determine the need for pumping, elements of a nonconforming system, determination of failure or imminent danger, or resolution. Within 21 days after an evaluator submitted an evaluation report, the authorized local health department would have to determine the status of all the following based on the evaluation:

- Whether the onsite wastewater treatment system was in failure.
- Whether elements of a nonconforming system were contributing to an overall failure of the onsite wastewater treatment system.
- Whether elements of a nonconforming system were not contributing to an overall failure and the onsite wastewater treatment system met a sufficient level of compliance and could be managed in a manner to provide for the minimum level of protection of public health and the environment to allow for continued use.
- Whether the onsite wastewater treatment system meets a sufficient level of compliance and can be managed to provide for the minimum level of protection of public health and the environment to allow for continued use.
- Whether the onsite wastewater treatment system followed Part 128 and the Statewide Sewage Code.
- Whether the evaluation report was unable to be completed and the owner of premises or a structure not connected to public sanitary sewer needed to take corrective actions to allow an evaluator to complete an evaluation.

"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.

Additionally, within the 21-day time frame, the local health department would have to determine the following:

- Whether any corrective actions or management steps would have to be taken by the owner of the onsite wastewater treatment system to satisfy the requirements of the Statewide Sewage Code and the evaluation requirements
- Whether the septic tank or tanks needed to be pumped and review the provided report for any pumping, to determine if the relevant requirements of the Statewide Sewage Code were satisfied.

The local health department also would have to inform the owner of the onsite wastewater treatment system of any determination made by the local health department in response to an evaluation and specify an applicable time period for corrective actions to be completed.

If the authorized local health department determined that an evaluation report identified the need for the septic tank or tanks to be pumped, the owner of the onsite wastewater treatment system would have to have the tank or tanks pumped by a septage waste servicing business licensed under Part 117 of NREPA within 60 days after receiving the evaluation report.

Fines

If the owner of an onsite wastewater treatment system or the owner of the premises or structure not connected to a public sanitary sewer failed to arrange for an onsite wastewater treatment system evaluation, failed to have the system evaluated in accordance with bill's provisions, or failed to complete corrective actions the owner would be subject to the following:

- Beginning 60 days after the end of the applicable time period required for an evaluation or corrective action under subsection and in the absence of good cause shown by the owner as described below, a maximum \$250 civil fine for each 30-day period that the system remained unevaluated or corrective actions remained incomplete.
- Beginning one year after the end of the applicable time period described above and in the absence of good cause shown, a maximum \$500 civil fine for each 30-day period that the system remained unevaluated or corrective action remained incomplete; however, the civil fines could not exceed \$15,000 in total.

If an authorized local health department determined that an evaluation report identified evidence of failure, the owner of the onsite wastewater treatment system or the owner of the premises or structure would have to remedy the failure within six months after receiving the evaluation report or within a time period determined by the authorized local health department. An owner that violated this provision would be subject to a civil fine of up to \$1,000 for each 30-day period that the failure continued. The prosecutor of the county in which the violation occurred or the Attorney General could bring an action to collect the fine and require remedy for the failure.

The bill would allow EGLE to waive any fine described above if the owner of the onsite wastewater treatment system or the owner of the premises or structure not connected to a public sanitary sewer demonstrated that the owner's income was at or below 400% of the Federal Poverty Guidelines, and had completed an evaluation or remedied any failure identified in an evaluation within one year. The one year extension could be granted in accordance with rules promulgated by the Statewide Sewage Code. Additionally, EGLE could waive a fine if the payment of the fine posed a significant financial stress to the the owner of the system, premises, or structure and that owner completed an evaluation or remedied any failure identified in an evaluation within one year.

All State Administrative fees and civil fines would have to be forwarded to the State Treasurer for deposit into the Onsite Wastewater Treatment System Administration Fund.

Beginning two years after the first civil fine for noncompliance with an evaluation or corrective action, the civil fine would constitute a recorded lien when filed at the register of deeds office on the real property owned by the owner of the onsite wastewater treatment system or the premises or structure. A recorded lien would be is effective and would have priority over all other liens and encumbrances except those filed or recorded before the date of the judgment only if notice of the lien were filed or recorded as required by State or Federal law. A lien filed or recorded would have to be terminated in accordance with the procedures required by State or Federal Law within 14 days after the owner had the system evaluated and paid the fine.

Evaluator Registration

To apply for a registration as an evaluator, an individual would have to meet the training requirements established in the Statewide Sewage Code and submit an application on a form and in a manner prescribed by EGLE. Beginning on the Statewide Sewage Code's effective date and each following three years, an evaluator who had three years of work experience, as determined by the EGLE, would not have to comply with the training requirements established in the Statewide Sewage Code.

The bill would allow EGLE to charge a \$180 application fee to cover EGLE's costs. Application fees would have to be forwarded to the State Treasurer for deposit into the Onsite Wastewater Treatment System Administration Fund. An evaluator registration would be valid for three years. The bill would require EGLE to review individuals registered as evaluators once every three years and renew a registration for any individual who submitted a renewal application and fee and who continued to meet continuing education requirements. Additionally, EGLE could establish renewal fees or late fees. An evaluator registration would not be transferable.

All evaluation reports would be subject to an audit by EGLE. The bill would allow EGLE to promulgate rules under the establishment of the Statewide Sewage Code to implement an audit and EGLE could suspend or revoke a registration following an audit. A registration could be denied, suspended, or revoked following a contested case hearing conducted in accordance with the Administrative Procedures Act for any of the following reasons:

- The use of fraud or deceit in obtaining or renewing a registration.
- An act of gross negligence, incompetence, or misconduct in conducting or reporting on an onsite wastewater treatment system evaluation.
- The failure to satisfactorily complete continuing education requirements specified under the Statewide Sewage Code.
- The submission of an evaluation report knowingly based on false, incorrect, misleading, or fabricated information.
- The failure to submit an evaluation report.
- The failure to pay a required fee.
- The failure to meet the ethical standards established in the Statewide Sewage Code.
- Conviction in a civil or criminal proceeding or failure to comply with a judgment or order that were issued by a court in connection with a matter related to the conduct necessary to provide the services of an evaluator.
- Any other violation of Parts 127 or 128, the rules promulgated under Part 127, or the Statewide Sewage Code.

The bill would require EGLE to maintain a list of registered evaluators and make the list available on the EGLE's website.

Minimum Standards and Reporting

The bill would require EGLE to develop and make available minimum standards and criteria for conducting evaluations and forms for use in documenting the management of onsite wastewater treatment systems, including evaluation report forms for onsite wastewater treatment system evaluations.

Ten years after the bill's effective date, EGLE would have to prepare and submit a report to the Legislature and Governor that analyzed and evaluated the results of the implementation of the Statewide Sewage Code, outlined needed areas of improvement, and assessed adjusting the evaluation timelines based on water quality data and trends.

Onsite Wastewater Treatment System Database

Additionally, EGLE would have to make available and maintain an onsite wastewater treatment system electronic database for recording and tracking the locations of onsite wastewater treatment systems in the State and the findings of onsite wastewater treatment system evaluations. The bill would allow EGLE to require an authorized local health department to input the data electronic database. Also, EGLE would have to provide

authenticated access to the onsite wastewater treatment system electronic database. The electronic database would have to contain all the following information:

- An evaluation report completed; however, EGLE could require an authorized local health department or evaluator to electronically enter the report information into the onsite wastewater treatment system electronic database instead of the written report.
- Documentation and records from authorized local health departments regarding the locations and previous evaluation or inspection records of onsite wastewater treatment systems.
- Any other data, information, or record determined relevant by EGLE.

The Database would have to provide authenticated access to authorized users to maintain the protected status of any sensitive personal information.

Penalties for Noncompliance

A person, an owner of an onsite wastewater treatment system, or an owner of a premises or structure that was not connected to a public sanitary sewer system that failed to comply with Parts 127 and 128, a rule promulgated under Part 127, or the Statewide Sewage Code would be guilty of a crime punishable as follows:

- For a first violation, a misdemeanor punishable by up to 90 days' or a fine of between \$500 and \$2,000, or both.
- For a second or subsequent violation, a misdemeanor punishable by up to 180 days' imprisonment or a fine of between \$1,000 and \$10,000, or both.

Each day that a violation continued would constitute a separate violation first offense. The penalties described above would not apply to an individual who was facing evaluation violations.

When EGLE or an authorized local health department determined that there were reasonable grounds to believe there had been a violation of Parts 127 or 128, the rules promulgated under Part 127, or the Statewide Sewage Code, the authorized local health department would have to investigate the violation. If the authorized local health department determined there had been a violation, the authorized local health department would have to issue a notice and penalty, as permitted under Administration of Conventional Systems and order the responsible party to make corrections for compliance.

The prosecutor of the county in which the violation occurred, or the Attorney General, could bring an action to collect a fine for noncompliance and could require compliance with Parts 127 and 128, the rules promulgated under Part 127, and the Statewide Sewage Code. A civil fine would have to be forwarded to the State Treasurer for deposit into the Onsite Wastewater Treatment System Administration Fund.

The bill would allow EGLE or an authorized local health department to request that the attorney general or prosecutor of the county in which the violation occurred commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation. An action could be brought in the circuit court for Ingham County or for the county in which the defendant was located, resided, or was doing business. If requested by the defendant, within 21 days after service of process, the court would have to grant a change of venue to the circuit court for Ingham County or for the county in which the alleged violation occurred, was occurring, or, in the event of a threat of violation, would occur. The court would have jurisdiction to restrain the violation and require compliance. In addition to any other relief,

the court would have to impose a civil fine of at least \$2,500, and the court could award reasonable attorney fees and costs to the prevailing party.

Final decision-making authority with respect to Parts 127 and 128, the rules promulgated under Part 127, and the Statewide Sewage Code would remain with the EGLE. An authorized local health department could perform delegated functions authorized by and with direction from the EGLE in accordance with the Statewide Sewage Code, but EGLE would maintain ultimate enforcement authority.

Onsite Wastewater Treatment System 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 and 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 have to remain in the Fund and would not lapse to the General Fund. Under the bill, EGLE would be the administrator of the Onsite Wastewater Treatment System Administration Fund and would have to spend money only for the following reasons upon appropriation:

- To administer Part 128.
- For grants to local health departments to carry out their responsibilities under Part 128 including for the digitization of records of locations relating to onsite wastewater treatment systems and the locations of drinking water supply sources, including onsite water wells or a public water supply.¹⁰
- For grants or loans to homeowners who were below 400% of the Federal Poverty Level for all associated costs applicable to remedy a failure of an onsite wastewater treatment system identified in an evaluation or to provide funds to compensate for an arranged onsite wastewater treatment system evaluation.¹¹
- To administer a public outreach and educational campaign to inform individuals on the requirements for onsite wastewater treatment evaluations and the importance of operation and maintenance of onsite wastewater treatment systems.

Point of Sale Ordinance

"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, which generally includes court ordered and foreclosure transfers, transfers between family, estates, or tenants, divorce related division, transfers to or from a governmental entity, or transfers related to new builds, among other things.

If a township, city, or village (local unit of government), county, or local health department had a point-of-sale ordinance to require evaluations of onsite wastewater treatment systems, the point-of-sale ordinance would have to be consistent with or as stringent as Part 128's requirements. Local ordinances would have to meet the Public Health Code's requirements pertaining to regulations made by local health departments necessary to protect public health

¹⁰ "Public water supply" would mean a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water; the term would not include a waterworks system that supplies water to only one living unit or a waterworks system that consists solely of customer site piping.

¹¹ "Federal Poverty Level" 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 under 42 USC 9902.

and would specify the bill's provisions would apply over a less stringent or inconsistent local regulation.

A point-of-sale ordinance could address occupancy in a manner that complied with the regulations of the local health department and was otherwise applicable to property of the same type. A point-of-sale ordinance could not interfere with, condition, or prohibit the transfer of title to a property.

If an evaluation of an onsite wastewater treatment system could not be performed before a sale or transfer of the property on which the onsite wastewater treatment system was situated, either the purchaser or the transferee would have to notify the local health department that had jurisdiction of the property of the names of the purchasers and a timeline for the completion of an evaluation.

Public Education and Training Fund

The bill would create the Public Education and Training Fund as a revolving fund within the Department of Treasury. The State Treasurer would have to deposit Fund fees and any money into the Fund. Additionally, the State Treasurer would have to direct the investment of the Fund and credit to the Fund interest and earnings from Fund investments. Money remaining in the Fund at the end of the Fiscal Year would carry forward to the next fiscal year. The Department would be the administrator of the Fund and would have to spend money from the fund to provide public education and outreach regarding onsite wastewater treatment systems and training to local health department, evaluators, EGLE, and EGLE agents.

The bill would allow EGLE or a local health department to collect reasonable fees permitted under the Code to services associated with an onsite wastewater treatment program and an additional \$5 Fund fee to any application fees for the program. The fees would have to be forwarded to the Department of Treasury quarterly.

FISCAL IMPACT

The bill 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 bill. The fees and fines introduced in the bill 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 developing and reviewing implementation plans, issuing permits for the installation, construction, alteration, and repair of onsite wastewater treatment systems. It also would require the department to maintain a database for tracking inspections, adding further administrative efforts and costs. Local health departments have to add a \$5 Public Education and Training Fund fee, which would be deposited into the newly created Public Education and Training Fund. This Fund would be administered by the Treasury and the funds therein would be spent for training, education, and outreach regarding onsite wastewater treatment systems. The Department of Environment, Great Lakes, and Energy 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 is needed to implement and maintain the program. Of this, \$3.8 million would support 24.0 full-time equivalents

(FTEs), \$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, which would be offset by charging an application fee of \$3,000 valid for three years. This fee would be adjusted for inflation every three years according to the Detroit Consumer Price Index and rounded to the nearest \$100. Further administrative costs would arise from developing standards for permitting systems which depend on the total number of systems used and developed, and EGLE also would collect revenue from civil fines of \$10,000 assessed individuals who submit knowingly false, incorrect, misleading, or fabricated information, or knowingly completed an evaluation without being an evaluator. There would also be an indeterminate cost to EGLE or local health departments 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 \$50 State administrative fee for onsite treatment system inspections to be forwarded to EGLE. This fee would be adjusted every three years based on cumulative annual percentage change in the Consumer Price Index. Inspectors would have to register with EGLE and submit a \$180 application fee. Registrations would have to 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, and EGLE estimates revenue generated by the fees and fines in the bill at approximately \$3.4 million.

The bill would require EGLE to evaluate and report on the implementation of the Statewide Sewage Code 10 years from the bill's effective date.

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