

## ONSITE WASTEWATER TREATMENT REGULATION

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4479 as introduced**  
**Sponsor: Rep. Phil Skaggs**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4480 as introduced**  
**Sponsor: Rep. Carrie Rheingans**

**Committee: Natural Resources, Environment, Tourism and Outdoor Recreation**  
**Revised 12-12-24**

### SUMMARY:

**House Bill 4479** would add a new Part 128 (Onsite Wastewater Treatment Systems) to the Public Health Code, to provide regulations for onsite wastewater treatment systems. Local health departments could implement and enforce the new regulations in Part 128 or any other part of the code relating to the systems, and the Department of Environment, Great Lakes, and Energy (EGLE) would be responsible for oversight at the state level.

#### Local health department administration of Part 128

The bill would prescribe criteria that must be met for a local health department to be authorized to administer Part 128 with regard to *onsite wastewater treatment systems*. Different criteria would apply concerning *conventional systems* and *alternative systems*.

*Onsite wastewater treatment system* would mean a system of components and appurtenances used to collect and treat *sanitary sewage* or *domestic equivalent wastewater* from one or more dwellings, buildings, or structures and discharge no more than 10,000 gallons per day of the resulting effluent to a soil dispersal system on property owned by or under the control of the owner of the onsite wastewater treatment system.

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

*Domestic equivalent wastewater* would mean wastewater that is not sanitary sewage but is demonstrated to have similar wastewater characteristics and flow and is amenable to onsite wastewater treatment and soil dispersal through a conventional or alternative system.

*Conventional system* would mean an onsite wastewater treatment system that contains a watertight septic tank with nonuniform distribution of effluent to a soil dispersal system that does not include any components of an approved alternative technology.

*Alternative system* would mean an onsite wastewater treatment system that is not a conventional system and that provides for an equivalent or better degree of protection for public health and the environment than a conventional system.

If a local health department does all of the following, EGLE would have to authorize it to administer Part 128 for ***conventional systems***:

- Adopts regulations consistent with Part 128 for the purpose of carrying out the responsibilities of the part and the *statewide code* (rules issued under Part 128 as authorized by House Bill 4480), including authority to do all of the following:
  - Conduct site evaluations, issue construction permits, and perform interim inspections during construction and final inspections on completion of construction, if required.
  - Issue notices and penalties to persons that violate Part 128 or endanger public health or the environment.
  - Respond to complaints of failure of an onsite wastewater treatment system.
  - Provide an administrative review for any person affected by an order, decision, or notice issued by the local health department. The results of the administrative review would have to be provided to EGLE, if requested.
- Maintains qualified staff to administer a conventional onsite wastewater treatment system program. A staff member would have to meet the following minimum educational and training requirements to work independently in an onsite wastewater treatment system program:
  - Possess a minimum of a four-year bachelor of science or arts degree with a major in environmental health, chemistry, biology, geology, engineering, or an equivalent degree.
  - Obtain a minimum of eight hours of training that includes at least four hours of field training on the U.S. Department of Agriculture soil classification system from EGLE or an EGLE-approved entity.
  - Demonstrate competency and understanding of local sanitary regulations, criteria for subsurface sewage disposal provided in state law and rules, and the Land Division Act.
  - Demonstrate competency and understanding of the Michigan local public health accreditation program, accreditation indicators, and all minimum program requirements pertaining to onsite wastewater treatment systems.
  - Conduct a minimum of 10 supervised field evaluations of onsite wastewater system designs and 10 supervised final inspections with senior staff or a supervisor.
  - Conduct a minimum of five solo field evaluations of onsite wastewater system designs and five solo final inspections demonstrating understanding of the onsite wastewater treatment program as determined by senior staff or a supervisor.
  - Attend and observe a minimum of two complete onsite wastewater system installations from beginning to end.
- Adopts local health department regulations that, at a minimum, provide protection for public health and the environment equivalent to this part and submit its regulations to the department for review and approval.

If a local health department does all of the following, EGLE would have to authorize it to administer Part 128 for ***alternative systems***:

- Meets the above requirements for conventional systems.

- Adopts regulations consistent with Part 128 for the purpose of carrying out the responsibilities of the part, 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 below.
  - Ensure long-term maintenance of alternative systems through the issuance of operating permits.

If a local health department has existing regulations or guidance for a particular type of alternative system, they would remain in effect until recommended standards and guidance for that type of system are developed by EGLE.

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

#### Construction permits for onsite wastewater treatment systems

The bill would prohibit an individual from installing, constructing, altering, or repairing an onsite wastewater treatment system unless that individual first obtains a construction permit from an authorized local health department, along with any other permits required under Part 31 (Water Resources Protection) or Part 41 (Sewerage Systems) of the Natural Resources and Environmental Protection Act (NREPA). If the local health department with jurisdiction over the property is not authorized to administer Part 128, the construction permit would have to be issued by EGLE. A local unit of government could not issue a building permit for a residence or facility that will be served by an onsite wastewater treatment system for which a construction permit has not been obtained under these provisions.

#### Construction permit conditions

If both of the following conditions are met, EGLE or the local health department, as applicable, would have to issue the construction permit:

- The alternative system does either of the following:
  - Uses a **proprietary product** that has been registered for use by EGLE.
  - Uses a nonproprietary technology in accordance with the recommended standards and guidance provided by EGLE in accordance with the statewide code (Part 128 rules).
- The soils, site conditions, and operating conditions at the location are appropriate for the use of the alternative system in compliance with the statewide code.

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

An alternate system would have to be inspected by EGLE, an authorized local health department, or registered inspector at least once every five years, unless otherwise provided in the statewide code.

### Proprietary product registration

Beginning January 1, 2026, a person could not install, construct, alter, or repair a proprietary product unless that product is registered for use in Michigan by EGLE and a construction permit has been obtained. To register a proprietary product, a person would have to submit an application on a form and in a manner prescribed by EGLE, which could charge a fee of \$3,000 to cover its costs in reviewing applications for registration. Money received by EGLE for the registration application would have to be forwarded to the state treasurer for deposit into the Onsite Wastewater Treatment System Administration Fund proposed by House Bill 4480.

Within 30 days after receiving the application and fee, EGLE would have to review the application and determine whether it is administratively complete. Within 60 days after receiving an administratively complete application, EGLE would have to approve or deny the registration and notify the applicant in writing. In approving a proprietary product and registering it for use in Michigan, EGLE would have to consider the recommended standards and guidance provided to it by the technical advisory committee proposed by House Bill 4480. A registration would be valid for five years and could be renewed without a fee.

Following a contested case hearing under the Administrative Procedures Act, EGLE could deny, suspend, or revoke a registration if it finds any of the following:

- The registrant obtained or attempted to obtain the registration through fraud or misrepresentation.
- 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 determine that the proprietary product does not function or perform as designed.

### Recommended standards

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

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

### Required inspections

The owner of an onsite wastewater treatment system would have to arrange for an inspection of that system to be conducted at least once every five years or if one of the following occurs:

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

The inspection would have to be conducted by either EGLE, the local health department, or a registered inspector (described below). EGLE would have to make inspection report forms for use by inspectors and make and maintain an electronic database for recording and tracking inspection results. The owner of the tank could have it pumped out no more than 30 days before the inspection. The individual conducting the inspection would have to do all of the following:

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

*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.

Within 21 days after an inspection is completed, the individual conducting the inspection would have to do both of the following:

- Prepare an inspection report that details the findings of the inspection.
- Provide a written or electronic copy of the inspection report to the owner of the onsite wastewater treatment system and to the authorized local health department or EGLE.

If the inspection finds evidence of failure causing an imminent public health hazard, the owner of the system would have to remedy the failure within six months after the inspection report is received and as directed by the authorized local health department or EGLE. An owner that violates this provision would be subject to a civil fine of up to \$1,000 for each 30-day period the system remains in failure. The prosecutor of the county where the violation occurred, or the attorney general, could bring an action to collect the fine.

An inspection would be valid for five years after it is conducted, unless there is a change in the system's use or a system failure during that period.

EGLE or the local health department could charge a reasonable fee, not to exceed the costs of conducting a system inspection. The entity also would have to charge a \$25 administrative fee,

to be forwarded to EGLE by October 1 of each year for deposit into the Onsite Wastewater Treatment System Administration Fund.

#### Registered inspectors

Beginning January 1, 2026, only EGLE, a registered inspector, or a qualified local health department staff member could conduct an onsite wastewater treatment system inspection. To qualify and become registered, an individual would have to meet the educational and training requirements of the statewide code (Part 128 rules), submit an application to EGLE, and pay a \$180 application fee.

If an organization or authorized local health department has a program to qualify inspectors of onsite wastewater treatment systems, EGLE could approve the program upon review and accept those inspectors as meeting registration requirements under the bill. An individual registered under these provisions would have to thereafter meet EGLE requirements in the statewide code and pay the application fee.

EGLE would have to review registrations once every three years and renew the registrations of individuals who continue to meet the above requirements. EGLE would have to maintain a list of registered individuals and make the list available on its website.

Following a contested case hearing under the Administrative Procedures Act, EGLE could deny, suspend, or revoke a registration if it finds any of the following:

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

#### Penalties

A person that knowingly submits to EGLE or the local health department information related to an onsite system that is false, incorrect, misleading, or fabricated would be guilty of a misdemeanor punishable by a fine of up to \$10,000 per violation *and* imprisonment for up to one year, or both.

#### Preemption

The bill would prohibit a local unit of government (a township, city, or village), a county, or a local health department from adopting a point-of-sale ordinance related to onsite wastewater treatment. If a local unit of government or local health department already has a point-of-sale ordinance to require inspections of these systems, it would have to be phased out or repealed within one year after the bill takes effect. If a county already has such an ordinance, it would have to be phased out or repealed within seven years after the bill takes effect. The bill would state that EGLE, under Part 41 of NREPA and under the Public Health Code, and local health departments, under the Public Health Code, have exclusive jurisdiction over the regulation, permitting, and inspection of onsite wastewater treatment systems.

MCL 333.12752 and proposed MCL 333.12801 et seq.

**House Bill 4480** would amend the Public Health Code to add provisions to the new Part 128 to establish a technical advisory committee that would help implement certain provisions of Part 128, establish a fund to receive fees related to Part 128, and authorize the promulgation of rules to establish a statewide code containing performance-based standards for conventional and alternative onsite wastewater treatment systems.

Technical advisory committee

The bill would create a technical advisory committee in EGLE to advise EGLE on all of the following:

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

The technical advisory committee would consist of the following members who have technical or scientific knowledge applicable to onsite wastewater treatment systems:

- Five regional local health department representatives recommended by a state organization representing local health departments, with the governor, the speaker of the House, the House minority leader, the Senate majority leader, and the Senate minority leader each appointing one member.
- All of the following members appointed by the governor:
  - Two professional engineers.
  - One hydrogeologist.
  - One university representative.
  - One onsite system product manufacturer.
  - One onsite wastewater system installer.
  - One onsite wastewater system service provider.
  - Two representatives of EGLE.
  - One state epidemiologist.
  - One individual with knowledge of the use of onsite wastewater treatment systems representing users of onsite wastewater treatment systems.
  - One representative from a state organization specializing in the protection of public health and the environment through improved water quality.

The first members would have to be appointed within 90 days after the bill takes effect. Members would serve four-year terms or until a successor is appointed. If a vacancy occurs, it would be filled in the same manner as the initial appointment. Members would serve without

compensation, but could be reimbursed for actual and necessary expenses. The committee would be subject to the Open Meetings Act and the Freedom of Information Act (FOIA). EGLE would have to provide administrative support to the technical advisory committee.

In offering recommendations and advice to EGLE, the committee would have to consider the following:

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

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

#### Onsite Wastewater Treatment System Administration Fund

The bill would create the Onsite Water Treatment System Administration Fund in the state treasury. EGLE could expend money from the fund, upon appropriation, only for the following purposes:

- To administer Part 128
- For grants to local health departments to carry out their responsibilities under Part 128.
- For grants or loans to homeowners who are below 300% of the *federal poverty line* to update a failure of an onsite wastewater treatment system found during an inspection. (*Federal poverty line* would mean the federal poverty guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.)

#### Statewide code

Within three years after the bill takes effect, and after consulting with the technical advisory committee, EGLE would have to develop and issue rules that establish a statewide code containing standards for systems. The rules would have to provide baseline protection for public health and the environment and include all of the following:

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



- Requirements for the approval of conventional, alternative, and experimental wastewater treatment system products, components, or devices.
- Criteria for requesting and granting appeals by an authorized local health department.
- Criteria for allowing the continued use of approved onsite wastewater treatment systems in which a construction permit was issued before the statewide code went into effect if the use of an onsite wastewater treatment system can be managed in a manner that does all of the following:
  - Ensures an effective level of treatment of sanitary sewage determined to be necessary, based on risk.
  - Protects public health and the environment.
  - Protects the surface waters of the state.
  - Protects groundwater quality.
- Qualifications and continuing education requirements for individuals involved in the management of onsite wastewater treatment systems.
- A requirement for septic tanks installed or altered the bill's effective date to contain a septic tank access riser and secondary safety device.

Proposed MCL 333.12815, 333.12817, and 333.12829

Effectiveness provisions

Each bill would take effect 90 days after it is enacted. Neither bill can take effect unless both bills are enacted.

**FISCAL IMPACT:**

House Bills 4479 and 4480 are likely to increase costs and revenues for EGLE by requiring the department to establish, execute, and enforce a statewide code for onsite wastewater treatment systems and by allowing the department to collect code-related fees. It is unclear at present whether program revenue will meet program costs; HB 4479 includes a provision requiring "a reasonable fee not to exceed the costs of conducting onsite wastewater treatment system inspection" to be charged. Departmental costs under the bill are likely to include application and permit reviews, system inspections, inspector certifications, and inspection reporting requirements. Departmental revenues under the bill are likely to include the yet-to-be-determined inspection fees, proprietary product registration application fees (\$3,000), state administration fee to accompany inspection fees (\$25), and registered inspector application fees (\$180). Costs and revenues are also likely to increase for local units of government with health departments that receive delegated authority from EGLE to administer and enforce code requirements. The department's FY 2024-25 budget totals \$1.0 billion Gross (\$260.7 million GF/GP) and 1,652.0 FTE positions.

House Bill 4479 also would have an indeterminate fiscal impact on local units of government. The number of persons that would be convicted of a misdemeanor for knowingly submitting false, incorrect, misleading, or fabricated information related to an onsite wastewater treatment system is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction.

Also under the bill, an owner of an onsite wastewater treatment system that fails to remedy failures identified in inspection reports within 6 months after the inspection report is received would be subject to a civil fine for each 30-day period the onsite wastewater treatment system remains in failure. The fiscal impact would depend on the number of owners that fail to remedy hazardous situations identified in inspection reports and are subsequently ordered to pay a civil fine of \$1,000 for each 30-day period. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. Local prosecutors or the attorney general would be authorized to bring actions to collect fines. The fiscal impact on local court systems would depend on how court caseloads and related administrative costs are affected. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

Legislative Analyst: Josh Roesner  
Fiscal Analysts: Austin Scott  
Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.