

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 52

Session of
1989

INTRODUCED BY GEORGE, FEE, WOZNIAK, LUCYK, HAYDEN, LEVDANSKY,
TRELLO, HALUSKA, HERMAN, CAWLEY, MORRIS, ROBINSON, VAN HORNE,
DIETTERICK, LAUGHLIN, STABACK, DALEY, BATTISTO, ANGSTADT,
COLAIZZO, CLYMER, WASS, TIGUE, BELFANTI, BURD, DISTLER,
MERRY, GIGLIOTTI, CARLSON, MELIO, SERAFINI, BELARDI, BISHOP,
VEON, SAURMAN AND BROUJOS, JANUARY 18, 1989

SENATOR FISHER, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,
AS AMENDED, JUNE 13, 1989

AN ACT

1 Amending the act of January 24, 1966 (1965 P.L.1535, No.537),
2 entitled, as amended, "An act providing for the planning and
3 regulation of community sewage systems and individual sewage
4 systems; requiring municipalities to submit plans for systems
5 in their jurisdiction; authorizing grants; requiring permits
6 for persons installing such systems; requiring disclosure
7 statements in certain land sale contracts; authorizing the
8 Department of Environmental Resources to adopt and administer
9 rules, regulations, standards and procedures; creating an
10 advisory committee; providing remedies and prescribing
11 penalties," further providing for the Advisory Committee;
12 further providing for the approval of certain plans, for
13 permits, for the powers and duties of local agencies, the
14 certification board, the Environmental Quality Board and the
15 department; and reestablishing the State Board for
16 Certification of Sewage Enforcement Officers pursuant to the
17 Sunset Act.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 SECTION 1. SECTION 2 OF THE ACT OF JANUARY 24, 1966 (1965
21 P.L.1535, NO.537), KNOWN AS THE PENNSYLVANIA SEWAGE FACILITIES
22 ACT, AMENDED JULY 22, 1974 (P.L.621, NO.208), IS AMENDED TO

<—

1 READ:

2 SECTION 2. DEFINITIONS.--AS USED IN THIS ACT:

3 * * *

4 "RESIDENTIAL SUBDIVISION PLAN" MEANS A SUBDIVISION IN WHICH
5 AT LEAST TWO-THIRDS OF THE PROPOSED DAILY SEWAGE FLOWS WILL BE
6 GENERATED BY RESIDENTIAL USES.

7 * * *

8 Section ~~±~~ 2. Sections 4, 5(e) and 7(a) and (b)(7) of the act <—
9 ~~of January 24, 1966 (1965 P.L.1535, No.537), known as the~~ <—
10 ~~Pennsylvania Sewage Facilities Act~~, amended July 22, 1974
11 (P.L.621, No.208), are amended to read:

12 Section 4. Advisory Committee.--(A) An advisory committee <—
13 shall be appointed within three months of the passage of this
14 act and biennially thereafter, membership of which shall be
15 composed of one representative from the following organizations,
16 the name of said representative to be submitted to the secretary
17 within ten days of receipt of request for same: Pennsylvania
18 State Association of Township Supervisors, Pennsylvania State
19 Association of Boroughs, Pennsylvania League of Cities,
20 Pennsylvania State Association of Township Commissioners,
21 Pennsylvania State Association of County Commissioners,
22 Pennsylvania Association of Plumbing, Heating, Cooling,
23 Contractors, Inc., Pennsylvania Society of Professional
24 Engineers, Mortgage Bankers' Association, Pennsylvania Builders
25 Association, Pennsylvania Association of Realtors, Pennsylvania
26 Society of Architects, County Health Departments, Pennsylvania
27 State University, Pennsylvania Municipal Authorities
28 Association, Pennsylvania Section of the American Water Works
29 Association, Water Pollution Association of Pennsylvania,
30 American Society of Civil Engineers, Pennsylvania Environmental

1 Health Association, Farmers Home Administration, Consulting
2 Engineers Council of Pennsylvania, National Association of Water
3 Companies, Pennsylvania Vacation Land Developers Association,
4 United States Department of Housing and Urban Development,
5 Pennsylvania Department of Commerce, Pennsylvania Department of
6 Community Affairs, Office of State Planning and Development,
7 Pennsylvania Bar Association, and such other organizations
8 having a direct interest in the area of water and sewage as the
9 secretary deems necessary.

10 (B) The advisory committee shall have the opportunity to <—
11 review proposed rules, regulations, standards and procedures and
12 shall review existing rules, regulations, standards and
13 procedures of the department pursuant to this act.

14 (C) The recommendations of the advisory committee shall be <—
15 submitted to the secretary who shall give due consideration to
16 the same.

17 Section 5. Official Plans.--* * *

18 (e) The department is hereby authorized to approve or
19 disapprove official plans for sewage systems submitted in
20 accordance with this act within one year of date of submission
21 and revisions of official plans within such lesser time as the
22 regulations shall stipulate, except that the department shall
23 approve or disapprove revisions constituting residential
24 subdivision plans within ninety days of the date of A COMPLETE <—
25 submission, for the period of one year from the effective date
26 of this amendatory act, and within sixty days of the date of A <—
27 COMPLETE submission thereafter. THE DEPARTMENT SHALL DETERMINE <—
28 IF A SUBMISSION IS COMPLETE WITHIN TEN (10) WORKING DAYS OF ITS
29 RECEIPT.

30 * * *

1 Section 7. Permits.--(a) No person shall install,
2 construct, or request bid proposals for construction, or alter
3 an individual sewage system or community sewage system or
4 construct, or request bid proposals for construction, or install
5 or occupy any building or structure for which an individual
6 sewage system or community sewage system is to be installed
7 without first obtaining a permit indicating that the site and
8 the plans and specifications of such system are in compliance
9 with the provisions of this act and the standards adopted
10 pursuant to this act. No permit may be issued by the local
11 agency in those cases where a permit from the department is
12 required pursuant to the act of June 22, 1937 (P.L.1987,
13 No.394), known as "The Clean Streams Law," as amended, or {where <—
14 the department pursuant to its rules and regulations, determines
15 that such permit is not necessary either} for a rural residence <—
16 {or for the protection of the public health}. A municipality <—
17 ~~may, however, by ordinance require a permit for a rural~~
18 ~~residence. In such a case the local agency administering the~~
19 ~~provisions of this act within the municipality shall require a~~
20 ~~permit for a rural residence. A permit for a rural residence~~
21 ~~shall not be necessary unless the local municipality requires it~~
22 ~~by ordinance. Except where a municipality requires a permit by~~
23 ~~ordinance, the owner of any rural residence shall install, as a~~
24 ~~minimum, a septic tank or tanks with a capacity of not less than~~
25 ~~nine hundred gallons with a drain field of one thousand two~~
26 ~~hundred square feet, and drain field trench lines at a minimum~~
27 ~~of three feet wide, two feet deep with one foot of aggregate~~
28 ~~below one foot of soil cover, which shall be at least one~~
29 ~~hundred fifty feet from any property line, one hundred year~~
30 ~~flood plain, or any river, stream, creek, impoundment, well,~~

1 ~~water course, storm sewer, lake, dammed water, pond or spring.~~
2 ~~However, it is expressly understood that the owner and the~~
3 ~~purchaser of a parcel which qualifies as a rural residence~~
4 ~~recognize that soil testing procedures were not necessary. The~~
5 ~~owner and purchaser who installs a system under the provisions~~
6 ~~of this section shall be deemed to release and hold harmless the~~
7 ~~department, the local permitting agency, agent and all township~~
8 ~~officials from any responsibility or liability for the~~
9 ~~functioning of the septic system installed. The property owner~~
10 ~~shall be liable for any contamination or pollution which occurs~~
11 ~~as the result of the malfunction of a septic system installed in~~
12 ~~accordance with the provisions of this subsection. It is the~~
13 ~~sole responsibility of the property owner to correct any system~~
14 ~~which is shown to contaminate ground or surface water. The local~~
15 ~~permitting agent shall certify that the system meets the above~~
16 ~~stated requirements. The cost incurred for the certification~~
17 ~~inspection by the local permitting agency shall be borne by the~~
18 ~~property owner. The provisions of section 7.1 relating to~~
19 ~~certain notices in contracts for the sale of land shall apply to~~
20 ~~all property which is subject to this section. EXCEPT WHERE A~~ <—
21 ~~LOCAL AGENCY REQUIRES A PERMIT BY ORDINANCE, NO PERMIT SHALL BE~~
22 ~~REQUIRED FOR THE INSTALLATION OF AN INDIVIDUAL ON-LOT SEWAGE~~
23 ~~SYSTEM FOR A RESIDENTIAL STRUCTURE OCCUPIED OR INTENDED TO BE~~
24 ~~OCCUPIED BY NOT MORE THAN TWO FAMILIES, ONE OF WHOM IS THE~~
25 ~~PROPERTY OWNER, ON A CONTIGUOUS TRACT OF LAND TEN ACRES OR MORE~~
26 ~~IF THE OWNER OF THE PROPERTY WAS THE OWNER OF RECORD AS OF~~
27 ~~JANUARY 10, 1987.~~

28 (b) * * *

29 (7) If construction or installation of an individual sewage
30 system or community sewage system and of any building or

1 structure for which such system is to be installed has not
2 commenced within [two] three years after the issuance of a
3 permit for such system, the said permit shall expire, and a new
4 permit shall be obtained prior to the commencement of said
5 construction or installation.

6 * * *

7 Section ~~2~~ 3. Section 8(b) of the act is amended by adding a <—
8 paragraph and the section is amended by adding a subsection to
9 read:

10 Section 8. Powers and Duties of Local Agencies.--* * *

11 (b) Each local agency in addition to the powers and duties
12 conferred upon it by existing law shall have the power and the
13 duty:

14 * * *

15 (1.1) To have at least one alternate sewage enforcement
16 officer authorized AS AUTHORIZED BY THE LOCAL AGENCY to work in <—
17 the municipality or municipalities of the local agency.

18 * * *

19 (c) Sewage enforcement officers employed by local agencies
20 in accordance with this act, in performing their duties as
21 required under this act, may accept prior testing data and
22 information obtained by a previous sewage enforcement officer,
23 provided that the site and prior testing meets all of the
24 following criteria and the sewage enforcement officer certifies
25 the same to the local agency:

26 (1) The soils testing performed on the property in question
27 has not been cited in a revocation, suspension or other
28 agreement to surrender certification which indicates violations
29 of soil testing procedures by the previous sewage enforcement
30 officer.

1 (2) The exact location of the test to be used for issuance
2 of a permit must be verifiable by at least one of the following
3 methods:

4 (i) Location of the test pit and percolation hole remnants
5 on the lot by the current sewage enforcement officer.

6 (ii) The existence of recorded measurements from at least
7 two permanent landmarks on the property in question establishing
8 the original test location.

9 (iii) A scale drawing of the lot or property in question
10 indicating the location of the tests by reference to at least
11 two permanent landmarks.

12 (iv) Identification of the exact location of the tests by
13 the prior sewage enforcement officer, provided that his or her
14 certification has not been revoked, suspended or voluntarily
15 surrendered to the department.

16 (3) Verification that the percolation test and soils
17 evaluation was conducted in accordance with the applicable
18 regulations.

19 (4) Soils description and percolation test data are
20 available and recorded on the prescribed form, or its
21 equivalent, in sufficient quantity and quality to be interpreted
22 by others.

23 (5) The soil probes were conducted within ten feet of the
24 proposed absorption area.

25 (6) The percolation test on the lot was performed on the
26 site of the proposed absorption area.

27 (7) The person who originally observed or conducted the
28 testing was certified under the current certification
29 requirements of this act.

30 (8) No inaccuracies or falsifications of the test data are

1 apparent or identifiable.

2 (9) No changes to the site have occurred since the time of
3 the original testing.

4 Section 3 4. Section 9 of the act, amended December 10, 1974 <—
5 (P.L.856, No.288), is amended to read:

6 Section 9. Powers and Duties of the Environmental Quality
7 Board.--(a) The Environmental Quality Board shall have the
8 power and its duty shall be to adopt such rules and regulations
9 of the department, applicable throughout the Commonwealth, as
10 shall be necessary for the implementation of the provisions of
11 this act. Such rules and regulations shall establish standards
12 for the construction, installation, alteration, maintenance and
13 operation of individual sewage systems and community sewage
14 systems and of sewage treatment plants in such systems, take
15 cognizance of latest technological developments in the field of
16 individual sewage systems, including adoption of standards
17 providing for use of alternate individual sewage systems,
18 standards for enforcement programs of local agencies and for the
19 certification of personnel employed by local agencies to
20 administer the provisions of this act, standards for the
21 preparation, review and acceptance of official plans, and
22 requirements for the disbursement of State and Federal funds to
23 municipalities and local agencies for planning, personnel and
24 construction of sewage disposal systems. Such rules and
25 regulations shall be adopted pursuant to the act of July 31,
26 1968 (P.L.769, No.240), known as the "Commonwealth Documents
27 Law," upon such notice and after such public hearings as the
28 board deems appropriate. The rules and regulations adopted by
29 the board under this section shall supersede any ordinance,
30 rules or regulations of local agencies which are not in

1 conformity with the rules and regulations of the board.

2 (b) Within one year of the effective date of this amendatory
3 act, the board shall promulgate proposed rules and regulations
4 that govern the ability of local agencies to issue permits for
5 the construction of individual residential sewage systems where
6 soil mottling is present. The rules and regulations shall
7 include, but not be limited to, the following:

8 (1) A requirement that a local agency perform a percolation
9 test when one is requested in writing by the owner of the
10 property, at the owner's expense, where the local agency
11 determines soil mottling is present.

12 (2) Where the sole reason for a property not meeting the
13 requirements for the installation of an individual residential
14 sewage system is the presence of soil mottling and where no
15 other approved alternate sewage systems can be permitted on the
16 property, the local agency ~~may still~~ SHALL issue a permit for an <—
17 individual sewage system where the property owner meets all of
18 the following conditions:

19 (i) The property owner demonstrates that at least three
20 individual residential sewage systems in close proximity to the
21 applicant's property have been functioning without pollutional
22 discharges to surface or groundwater for five years or more and
23 have soil conditions similar to the applicant's property as
24 verified by a qualified soil scientist.

25 (ii) The property owner proposes an individual residential
26 sewage system that, in the opinion of a registered professional
27 engineer, can be expected to function in the soils on the
28 property without pollutional discharges to surface or
29 groundwater.

30 (iii) The property owner provides evidence of financial

1 assurance to the local agency in an amount equal to the cost of
2 replacement of the individual residential sewage system proposed
3 and the reasonably anticipated cost of remedial measures to
4 cleanup contaminated groundwater and to replace any contaminated
5 water supplies. In no case shall the local agency approve
6 financial assurance in an amount less than twenty thousand
7 dollars (\$20,000) for each year up to three years. The township
8 may require an additional two years financial assurance. The
9 local agency may waive the financial assurance requirement after
10 five years if there is no evidence of pollutional discharge to
11 surface or groundwater.

12 (iv) The property owner produces evidence of a clause in the
13 deed to the property that clearly indicates soil mottling is
14 present on the property and that an individual residential
15 sewage system meeting the requirements of this section was
16 installed on the property.

17 (c) The Environmental Quality Board shall promulgate rules
18 and regulations that are to establish the specific types of
19 financial assurance that are acceptable under this section, the
20 procedures local agencies are to follow in forfeiting the
21 financial assurance and the type of additional financial
22 assurance required if a system approved under this section is
23 replaced. The financial assurances may include an option where
24 the local agency may offer, for a fee, financial assurance for
25 systems installed under this section up to the amount
26 established in subsection (b)(2)(iii).

27 (d) The local agency shall not be held liable for the
28 performance of an individual residential sewage system approved
29 under this section, except where financial assurance is provided
30 by the local agency under subsection (c).

1 Section 4 5. Sections 10 and 11 of the act, amended July 22, <—
2 1974 (P.L.621, No.208), are amended to read:

3 Section 10. Powers and Duties of the Department of
4 Environmental Resources.--The department shall have the power
5 and its duty shall be:

6 (1) To order municipalities to submit official plans and
7 revisions thereto within such time and under such conditions as
8 the rules and regulations promulgated under this act may
9 provide.

10 (2) To approve or disapprove official plans and revisions
11 thereto.

12 (3) To order the implementation of official plans and
13 revisions thereto.

14 (4) To administer grants and reimbursements to local
15 agencies as provided by section 6 of this act.

16 (5) To review the performance of local agencies in the
17 administration of section 7 of this act.

18 (6) To cooperate with local agencies, the advisory committee
19 and industry in studying and evaluating new methods of sewage
20 disposal. For the purpose of investigating innovative or
21 alternative on-lot sewage systems, the department may enter into
22 contracts with private entities. Such contracts shall be funded
23 from funds specifically appropriated by the General Assembly for
24 this purpose.

25 (7) To order a local agency to undertake actions deemed by
26 the department necessary to administer effectively section 7 of
27 this act in conformance with the rules and regulations of the
28 department.

29 (8) To enter upon lands and make inspections and to require
30 the submission of papers, books and records by local agencies

1 for the purposes set forth in this act.

2 (9) To train sewage enforcement officers and to require
3 sewage enforcement officers to participate in training. Such
4 training shall be funded from funds specifically appropriated by
5 the General Assembly for this purpose.

6 (10) To revoke or suspend the certification of sewage
7 enforcement officers for cause, or to reinstate same, in
8 accordance with the rules and regulations of the department:
9 Provided, however, That such actions of the department shall
10 become effective only after notice and an opportunity for
11 hearing before the certification board has been given.

12 (11) To develop a list of firms or agencies that provide
13 testing services for evaluating gradation specifications of sand
14 for use in elevated sand mound on lot disposal systems. A
15 permittee that is the sand supplier for an elevated sand mound
16 shall certify in writing that sand used in these systems meets
17 the requirements established by the department.

18 Section 11. Certification Board.--(a) There is hereby
19 created within the department a State Board for Certification of
20 Sewage Enforcement Officers. The board shall consist of five
21 members to be appointed by the secretary. One member shall be a
22 representative of local government; one member shall be a sewage
23 enforcement officer certified under the provisions of this act;
24 one member shall be a representative of the engineering
25 profession; and two additional members shall be chosen from a
26 list of nominees submitted to the secretary by the advisory
27 committee. The advisory committee shall designate a minimum of
28 three nominees for the latter two positions. The original
29 appointed members of the board in the order listed above shall
30 hold office for one, two, three, three and four years,

1 respectively. Thereafter, each appointment shall be for a period
2 of four years' duration. The secretary may reappoint board
3 members for successive terms. Members of the board shall remain
4 in office until a successor is appointed and qualified. If
5 vacancies occur prior to completion of a term, the secretary
6 shall appoint another member in accordance with this section to
7 fill the unexpired term.

8 The secretary, or his representative, shall call the first
9 meeting of the board at which time a chairman of the board shall
10 be elected. Thereafter, the chairman shall be elected annually.
11 Three members of the board shall constitute a quorum. Meetings
12 may be called by the chairman as needed to conduct the business
13 of the board.

14 The members of the board shall receive no compensation for
15 their services but shall be reimbursed for actual and necessary
16 expenses incurred in the performance of their duties.

17 (b) The board shall have the power and its duty shall be, in
18 accordance with the rules and regulations of the department, to:

19 (1) Review and pass upon applications for certification of
20 sewage enforcement officers within thirty days of the receipt of
21 the test results from the testing contractor. If the board does
22 not meet within this time period, the applicants who have
23 achieved the necessary passing score on the certification
24 examination and who are not in violation or restrained by any
25 department regulation from certification shall be deemed to be
26 certified.

27 (2) Administer such examinations as prepared by the
28 department, as may be deemed necessary to determine the fitness
29 of candidates for certification. Such examinations shall be held
30 [at frequent intervals and at least annually to afford all

1 applicants an equal opportunity for taking such examinations] no
2 less than four times in each calendar year. The board shall
3 determine and shall announce, in sufficient time, the location
4 and time for such examinations, except that the board shall
5 allow the department to schedule special "walk-in" examinations
6 when a local agency demonstrates an immediate need to obtain a
7 sewage enforcement officer. During the first year of this act,
8 no fees will be charged for said examinations. During the second
9 and subsequent years, the board is hereby authorized to collect
10 a fee of ten dollars (\$10) from each applicant.

11 (3) Hold hearings and issue adjudications under the
12 provisions of the act of June 4, 1945 (P.L.1388, No.442), known
13 as the "Administrative Agency Law," on any revocation,
14 suspension or reinstatement of certification by the department:
15 Provided, That the filing of an appeal with the board shall not
16 operate as an automatic supersedeas of the action of the board <—
17 DEPARTMENT. The provisions of section 1921-A of The <—
18 Administrative Code notwithstanding, such actions of the
19 department shall not be appealable to the Environmental Hearing
20 Board.

21 (4) Consider for renewal biennially certificates issued
22 under this section, and collect a fee of five dollars (\$5) or
23 such reasonable fee as the department shall establish by
24 regulation from each certificate holder for such renewal.

25 (5) Compile and keep current a register showing the names
26 and addresses of certified sewage enforcement officers. Copies
27 of this register shall be furnished on request for the
28 department and for municipalities and upon payment of such
29 reasonable fee for all others, as the department shall
30 establish.

1 Section ~~5~~ 6. The act is amended by adding a section to read: <—

2 Section 20.1. Sunset Provisions.--(a) The State Board for
3 Certification of Sewage Enforcement Officers, scheduled for
4 termination under section 6 of the act of December 22, 1981
5 (P.L.508, No.142), known as the "Sunset Act," is hereby
6 reestablished.

7 (b) The board is subject to evaluation, review and
8 termination within the time and in the manner provided in the
9 "Sunset Act."

10 (c) This section, with respect to the board, constitutes the
11 legislation required to reestablish that board under the "Sunset
12 Act."

13 Section ~~6~~ 7. The provisions of section 1 (section 7(a)) of <—
14 this act shall not affect any right to a rural residence
15 exemption from permit requirements imposed by a municipality
16 which was legally established prior to the effective date of
17 this act.

18 ~~Section 7. Three years after enactment, the Joint Air and <—~~
19 ~~Water Pollution Control and Conservation Committee shall report~~
20 ~~to the General Assembly its findings concerning the performance~~
21 ~~of those systems installed on rural residences subsequent to the~~
22 ~~effective date of this act.~~

23 Section 8. This act shall take effect immediately.