



HEALTH DEPARTMENT

of Northwest Michigan

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April 11, 2018

House of Representatives
Attn: Gary Howell
P.O. Box 30014
Lansing, MI 48909-7514

RE: HB5752; HB5753

Mr. Howell,

My name is Scott Kendzierski, Environmental Health Director for the Health Department of Northwest Michigan (HDNW), serving the Counties of Antrim, Charlevoix, Emmet and Otsego. I have been a public health profession since 1992 and have worked for three district health departments over my 28 years in environmental health; Branch-Hillsdale-St. Joseph DHD, Mid-Michigan DHD and now HDNW. I have worked with local sanitary codes in each district and observed the varying conditions present in those areas. I am proud of the job local public health has done to be protective of the environment and my experiences have lead me and others to continually strive for program improvement and to enhance our current sanitary codes as new technologies become available and where best practices can have the most impact.

For many years, HDNW has collaborated with local units of government to develop and administer effective Time of Transfer programs, to address threats to the public through strong sanitary codes, policies and public health interventions targeted at the protection of the environment and our local communities. We have participated in the statewide on-site wastewater accreditation program, working with the Michigan Department of Environmental Quality (MDEQ) to meet prescribed Minimum Program Requirements (MPRs) and have a strong on-site program.

The proposed House Bills, referenced above, have been developed with very little participation from the 45 Local Public Health Departments statewide and this approach is very concerning to the dedicated health professionals who administer environmental health programs throughout Michigan. Further the concept that Michigan has widespread pollution due to on-site systems is factually incorrect. This reasoning and approach has led to a development process that does not address many concerns that could have been deliberated prior to the introduction of HB5752/5753 and which will, undoubtedly, lead to bad legislation if passed.

I have attached a written position statement approved by my Board of Health for your review and would hope that you consider all testimony provided by my esteemed colleagues and what impacts this legislation will have, as written, on the citizens of Michigan

Respectfully,

Scott Kendzierski, REHS, MS
Director of Environmental Health Services

www.nwhealth.org





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The Health Department of Northwest Michigan does not support the proposed legislation to establish a statewide sanitary code through the following House Bills presented to the Michigan legislature on March 22, 2018.

HB 5752 of 2017

Environmental protection; sewage; onsite wastewater treatment systems; regulate, and provide for assessments and evaluations. Amends 1978 PA 368 (MCL 333.1101 - 333.25211) by adding pt. 128. TIE BAR WITH: HB 5753'17
Last Action: 4/10/2018 bill electronically reproduced 03/22/2018

HB 5753 of 2017

Environmental protection; sewage; onsite wastewater treatment systems; regulate and provide for assessments and evaluations. Amends sec. 12752 of 1978 PA 368 (MCL 333.12752) & adds secs. 12802, 12808 & 12809. TIE BAR WITH: HB 5752'17
Last Action: 4/10/2018 bill electronically reproduced 03/22/2018

Background

The main argument for adopting this legislation is that Michigan is the "only state without a statewide code". This argument suggests that the system in Michigan is inadequate at protecting surface and groundwater when compared to a statewide code. However, there are not data available to support this conclusion. Michigan is a unique state with varying soil conditions and each local jurisdiction has developed codes to design and permit sewage disposal systems based on the need of their community. There are no data available to show that a statewide code provides greater protection than the customized codes that are based on local geology.

Various groups have expressed concerns with the negative impact onsite sewage disposal systems have on Michigan surface and groundwater. The main study utilized to support these claims has questionable methodology and limited data to reach this conclusion. There are no studies available that compare the effectiveness of onsite sewage disposal systems in the states with a statewide sanitary code versus local sanitary codes. Without this comparison, it is not possible to conclude that a statewide sanitary code is more effective.

Negative Impacts to our District

- There is no credible proof that there is a profound need for such legislation, and the potential negative impacts to local constituents are significant. It is likely that the administrative rules would compromise the strong sanitary code in place, which could be jeopardized by lower standards, and it would force the elimination of successful real estate inspection programs implemented between the Health Department and local units of government.
- The program eliminates the rights of local jurisdictions to have a real estate transfer evaluation program. This eliminates the ability to inspect systems for

proper functioning at a time when buyers/sellers are receptive to inspections of their property and better able to negotiate the cost of repair.

- The legislation will require regular inspection of onsite systems (every five years for alternative systems and every ten years for conventional systems). This will create a contentious relationship with residents as they will be required to pay a fee and allow access to their property regularly for inspection of their system. The inspection of these systems at time of sale is far easier as homeowners are accepting of inspection of their property during this transaction and it is easier to negotiate costs during the sale process.
- The legislation requires inspection of systems every five or ten years, depending on the type of system. The increased burden to local health departments to track inspections and ensure compliance with the legislation would be significant and not possible with current resources. There is no additional funding to local jurisdictions tied to this legislation and the additional mandates set forth, and existing mandates are significantly underfunded by the state.
- An additional \$25 "State Administration Fee" will be added to each application. Local jurisdictions will be required to process these funds and pass them on to the state. These funds will be utilized by the state to "administer the program" and provide grants to those individuals who are unable to afford required corrections. None of these funds will be distributed to local jurisdictions to manage and administer the program locally. Constituents will likely see this as a tax to cover costs of others throughout the state. It is unclear what will happen when these funds run out, and if this fee will continue to increase and create additional burden to residents.
- A single database of all onsite systems installed throughout the county does not exist. This makes tracking and ensuring compliance with inspection frequency an impossible task.
- The legislation will likely be viewed by the community as an invasion of personal property rights and create a significant increase in legal action required by the Counties. If a homeowner refuses to pay for the inspection or allow access for an inspection, as required in the legislation, the system would no longer be approved. This would require legal steps to require compliance or deem the home unfit for habitation due to lack of an "approved" system.

Erosion of Local Authority & Control

- The bill package eliminates the authority of local officials to set the minimum site requirements required for an onsite sewage disposal system. A minimum statewide standard could result in a deterioration of the conservative standards that our district has supported since 1968 and which has protected the natural resources of our Counties and prevented the potential for public health issues associated with inadequate sewage disposal siting and design.
- The legislation would strip the authority of local jurisdictions to establish or maintain a time of sale program. Local programs have allowed for routine inspection of existing sewage disposal systems and drinking water wells. They

have been extremely successful in educating buyers and sellers about these systems and have identified and corrected faulty systems.

- The ability to establish regulations which are customized to local needs and geology and which protect the public and the environment would be taken from local jurisdictions. The Department of Environmental Quality (DEQ) would be the authority that would develop all onsite sewage system requirements throughout the state.

Questionable Validity of Supporting Data

- Decades of successful local control of this program is being discredited by a few groups based on a single study. The often-referenced study has been used to mislead the public into thinking that Michigan has a serious and widespread problem with onsite wastewater systems. This conclusion is false.
- Concerns regarding groundwater and wastewater contamination due to onsite systems has been the main focus for development of new legislation. Local jurisdictions are significantly invested in protecting local resources and the community. The local codes in place have been developed by well trained, degreed, and conscientious public health professionals and approved by elected members of the community who are all tasked with protecting the resources and people in their jurisdiction.
- A recurring argument is that Michigan is the “only state without a statewide code.” Michigan is unique and has developed local codes to address the unique geological conditions of the area and community needs. No study has been completed to demonstrate local governance is an inferior model to statewide legislation.

Development & Funding Concerns

- The short timeframe of this legislation has not provided local jurisdictions the ability to provide input or response. The legislation has been in development for months with very little input from local jurisdictions. Drafts of the legislation are often not provided, or what is shared is not the current version. The legislation is now being expedited through the approval process without adequate time for thorough review and response by local jurisdictions.
- The development of this bill package has occurred without transparency. There are no published meeting minutes for review and little ability to provide feedback on a piece of legislation that will have such a significant impact to the environment and the citizens of Michigan. The meetings that have been held on this legislation have occurred with a select group of advisors and has not included those in opposition to the proposal. This has not allowed for careful consideration of divergent points of view and/or anticipated outcomes.
- Local public health professionals have not been adequately represented in the process. There is no other group in the state that has more involvement or knowledge of onsite sewage disposal systems than the local public health departments. These are the professionals responsible for system permitting,

evaluation, troubleshooting, complaint response and assuring that the ground and surface waters are protected. Given the breadth of knowledge and experience of local public health professionals, it is concerning that this group was not more engaged in the development of this bill.

- The additional workload on local jurisdictions will create a significant strain on programs already underfunded by the state. This legislation does not provide any additional funding to local jurisdictions to handle the significant increase in tracking, evaluation, and enforcement of the elements of this proposal.
- The required fees, as well as the routine tracking and evaluation of personal property will likely be met with significant public push back if this bill is passed. The local jurisdiction will have the burden of trying to enforce compliance with the law. This will lead to strained relationships with the public and significant increases in enforcement and legal costs.

Summary

The elimination of local control in order to “fix” an issue that has taken root based on perception and not fact, is not acceptable. If there are local jurisdictions that do not meet a minimum standard of wastewater management, there are other, more direct, and effective methods that can be utilized to address this issue. The State’s role should be to support strong wastewater regulations, while advocating for areas that need to improved standards or practices, and not to establish minimum criteria that could jeopardize existing codes and preempt existing regulations.

The development of this legislation has been absent of strong involvement by county officials and local health departments. Politics should not supersede the role of local government, public health or environmental protection. Given the significant issues outlined above, the Health Department of Northwest Michigan opposes this bill in its entirety.

