



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**

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TO: EQC members  
FROM: Leanne Kurtz, Research Analyst  
DATE: December 18, 2013  
RE: Septic System Inspection at Time of Transfer - member-initiated study

During the EQC's first meeting of the 2013-2014 interim, Representative Lieser proposed that the Council dedicate time to reviewing policy considerations surrounding individual onsite septic system inspections at the time of transfer of property. The Council agreed to include the review in its work plan, allocating .05 FTE of staff time to the project.

Rep. Lieser sponsored HB 483 during the 2013 legislative session. The bill would have required the Board of Environmental Review to promulgate standards for inspection of individual onsite septic systems that local boards of health would have the option of adopting. The House Natural Resources Committee tabled the bill. A copy of the bill is attached.

This memo:

1. reviews HB 483 (2013), sponsored by Rep. Lieser, and the testimony provided at the bill's hearing;
2. summarizes the program implemented in 2011 by the Lewis and Clark County Health Department, which was referenced during testimony opposing HB 483; and
3. summarizes various state laws and regulations specific to requiring inspection of onsite wastewater systems either at the time of sale of property or at regular intervals.

HB 483

HB 483 would have required the Board of Environmental Review to "promulgate standards that local boards of health may adopt pursuant to 50-2-116 for the inspection of individual onsite septic systems prior to a property transfer." The standards would have to "require inspections and reports that provide the transferees with accurate and reliable assessments of the functionality and the condition of the onsite septic systems." The bill would have amended the authority provided to local boards of health under section 50-2-116 to specifically allow them to adopt regulations requiring inspection in accordance with the standards.

In his opening testimony, Rep. Lieser stated that the bill is designed to protect a consumer from entering into the purchase of a home with a failing system. Replacing a failed system could cause a buyer to default on a loan. In addition, a failing septic system threatens human health and the environment.

Proponents included a resident of Whitefish, a representative of the Montana Environmental Health Association (the members of which include sanitarians and environmental health professionals), the Montana Smart Growth Coalition, and the Montana Environmental Information Center. Proponents stressed that the bill is permissive for local governments and that

the policy is a consumer protection and environmental health issue.

The Montana Association of Realtors opposed the bill stating that, if enacted, the policy would only delay property transfers and would not accomplish the goal of increasing septic system inspections. The MAR representative said MAR is not opposed to septic inspections and that many buy-sell agreements already include inspection provisions. Ongoing maintenance of septic systems is the real problem. The representative said that local Realtors have worked closely with the Lewis and Clark County Health Department in developing a maintenance program that does not link septic inspection to the time of sale.

Informational witnesses included the Science and Education Director of the Whitefish Lake Institute, the administrator of the Planning, Prevention and Assistance Division of the Department of Environmental Quality, and the Lewis and Clark County Health Department Sanitarian.

#### Lewis and Clark County regulations

In 2011, the Lewis and Clark County Health Department adopted onsite wastewater treatment regulations. Under the regulations, a septic system owner is required to report the status of the system to the Health Department every 3 to 5 years, depending on how heavily the system is used. To comply with this requirement, an owner may report either by completing an online self-assessment form or by hiring an independent septic maintenance professional to inspect the system and submit the report.

The regulations are being phased in, and septic system owners receive notification by mail when their reports are due.

#### Other States' Approaches

Some states' statutes require inspection of septic systems at the time of transfer, others enable a state-level public health agency or local authorities to impose the requirement, and some do not address the specific requirement at all.

#### *New Mexico*

New Mexico's Environment Improvement Board is given broad rulemaking authority in section 74-1-8 of the New Mexico Statutes Annotated. Section 20.7.3.902 of the New Mexico Administrative Code provides, in part: "Prior to the transfer of a property with an established on-site liquid waste system, the transferor of the property shall have the system evaluated." The evaluation must be completed by a qualified third-party inspector on forms provided by the New Mexico Environment Department. The rule also states that if the system is shown to be failing, the owner shall remedy the failed system.

#### *Oregon*

Oregon requires a time of transfer evaluation of systems that use alternative treatment technology. Oregon Revised Statutes section 454.615 requires the Environmental Quality Commission to adopt rules that, among other things, "prescribe minimum requirements for the

operation and maintenance of subsurface sewage disposal systems . . ." Rule 340-071-0131 provides, in part: "After January 1, 2006, before transferring ownership of real estate served by an onsite system using alternative treatment technology, the seller must have the system evaluated in accordance with this rule." The rule also prescribes the information that must be included in the evaluation.

#### *Florida*

HB 1263, passed in 2012, gives local governments in Florida a choice of whether or not to adopt onsite septic system evaluation programs in their jurisdictions. Local governments located near a "first magnitude spring" were required to decide whether or not to impose an evaluation program by January 1, 2013. All other local governments may decide at any time. A first magnitude spring is defined as an area where water flows to the surface of the earth from underground at a rate of at least 100 cubic feet per second or around 64.8 million gallons per day. The evaluation program is not tied to time of sale; rather an evaluation must occur every five years in jurisdictions that have adopted the program.

#### *Missouri*

State law in Missouri does not require an inspection or evaluation of onsite sewage systems at regular intervals or at time of transfer, but some counties in the state do require inspections at time of transfer. If a lender or buyer requires an inspection, it must be conducted by a licensed individual.

#### *Minnesota*

Section 115.55 of the 2013 Minnesota Statutes includes rulemaking requirements, inspection criteria, compliance provisions, requirements for local standards and ordinances, and a requirement that a seller of property disclose in writing information on how sewage generated at the property is managed. The disclosure must include a description of the system and a map. The seller must also disclose the compliance status of the system and include any previous inspection reports. A seller who fails to disclose the existence or status of the system is liable for any costs a buyer incurs in bringing the system into compliance.

#### *Arizona*

Arizona Administrative Code R18-9-A316 requires inspection of all onsite wastewater treatment facilities whenever ownership of property changes. The seller is required to retain a qualified inspector to perform the inspection within 6 months before the date of the property transfer. The inspector must provide a report on an approved form to the seller. The buyer is required to complete and submit a Notice of Transfer form to the Department of Environmental Quality.

#### *Massachusetts*

Massachusetts General Laws Ch21A s. 13 requires the Commissioner of the Department of Environmental Protection to adopt regulations that comprise the state environmental code, including regulations that address standards for sewage disposal. Although Title 5 (310 CMR 15.000) of the environmental code **does** require inspection of septic systems at the time of property transfer, the section of law cited above states that the "department shall not require an

inspection of a system for the treatment and the disposal of sanitary sewage below the ground surface if the transfer is of residential real property, and is between the following relationships: (1) between current spouses; (2) between parents and their children; (3) between full siblings; and (4) where the grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor."

#### *Iowa*

Iowa Code 455B.172(11) states: "If a building where a person resides, congregates, or is employed is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected prior to any transfer of ownership of the building." The term "transfer" is specifically defined, as are conveyances that are not considered to be transfers. A system found to be failing must be renovated by the seller or, if agreement is reached between the parties, the buyer within a timeframe approved by the Iowa Department of Natural Resources. An inspection is valid for 2 years.

#### *California*

California state law does not require inspection of septic systems when a change in ownership occurs. California septic systems are permitted through Waste Discharge Requirements (WDRs) that are administered by one of nine regional boards. Most of the WDRs do require a seller to notify a buyer that a septic system is permitted by the state and that the buyer has a duty to notify the state of a change of ownership. Each of the nine regional boards has its own inspection program, most of which require annual inspection of septic systems.

#### *Idaho*

Idaho state law does not require septic system inspection at the time of transfer of property, and no authority exists for the Idaho Department of Environmental Quality or the state's seven regional health districts to impose such a requirement. Some lenders in Idaho do require that a purchaser of property have a mortgage survey conducted prior to final sale of the property and loan approval. The mortgage survey is conducted by a representative of the regional health district. It usually includes a requirement that the property owner have the septic tank pumped out and provide the receipt of the pumping to the district. A mortgage survey may also involve a district representative doing a visual survey of the property for any signs of septic failure and may include a water well test.