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HEALTH Standards for Sewage Management Systems: Provide for the Continued Use and Installation of All On-Site Sewage Management System; Authorize the Department of Human Resources to Adopt State-Wide Regulations for On-Site Sewage Management Systems; Repeal the Definition of "Prior Approved System"; Authorize the Department to Require Prior Examination and Approval of Such Systems Before Use in Georgia; Provide for a Reduction in Trench Length Under Certain Circumstances; and for Other Purposes

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HEALTH

Standards for Sewage Management Systems: Provide for the Continued Use and Installation of All On-Site Sewage Management Systems; Authorize the Department of Human Resources to Adopt State-Wide Regulations for On-Site Sewage Management Systems; Repeal the Definition of "Prior Approved System"; Authorize the Department to Require Prior Examination and Approval of Such Systems Before Use in Georgia; Provide for a Reduction in Trench Length Under Certain Circumstances; and for Other Purposes

BILL NUMBERS:	HB 992, SB 367
SUMMARY:	The bill proposed a repeal of the definition of "prior approved system" for on-site sewage management systems and would have authorized the Department of Human Resources to adopt state-wide regulations for such systems. Additionally, the bill would have required the Department of Human Resources to examine and to approve on-site sewage management systems before owners could use these systems in Georgia. The bill failed to pass either the House or the Senate.

History

The installation of an on-site sewage management system will change significantly in the summer of 2004.[1] After the change, the Department of Human Resources' ("DHR") new regulations will apply to most new on-site sewage management systems.[2] These new regulations will prohibit the installation of certain types of on-site sewage management systems that were acceptable prior to the

1. *See* Telephone Interview with Thomas Boller, Lobbyist, Boller, Sewell & Segars, Inc. (Apr. 22, 2004) [hereinafter Boller Interview].
2. *See id.*

change.[3] Many Georgians currently use the newly prohibited systems.[4]

An on-site sewage management system, i.e., a septic tank, treats sewage from single-family homes and small businesses in areas where public sewer is unavailable.[5] A septic tank treats sewage in two ways.[6] The first stage usually involves a tank into which wastewater flows and solid waste particles settle to the bottom.[7] The second stage usually consists of trenches filled with material that contribute to further filtering of the wastewater after it leaves the tank.[8] Prior to the 1980s, gravel was the conventional choice for material to fill the trenches of a septic tank. However, in that decade, alternative systems began using synthetic materials instead of gravel.[9] These synthetic materials were superior to gravel, and as a result, the amount of trench length needed to filter the wastewater coming from these tanks was less than the amount necessary in a conventional gravel system.[10] The improved efficiency of these alternative on-site sewage management systems decreased septic tank installation costs by reducing the amount of land needed for a septic tank trench.[11] This decrease in the required lot size allowed land owners to use their lots more efficiently, making the development of land less expensive.[12]

In 1994, Act 1223 authorized the DHR to approve on-site sewage management systems for state-wide use.[13] Only one manufacturer managed to gain the DHR's approval of a 50% reduction in trench length for its on-site sewage management.[14] In 1997, Act 280 authorized the DHR to regulate on-site sewage management systems and trench length.[15] Act 280 exempted any on-site sewage

3. *See id.*
4. *See id.*
5. DEP'T OF HUMAN RES. DIV. OF PUB. HEALTH, ON-SITE SEWAGE MGMT. SYSTEM ISSUES: REPORT TO THE COMM'R 1 (2002) (on file with the Georgia State University Law Review) [hereinafter DHR REPORT].
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 2-3.
10. *Id.* at 3.
11. DHR REPORT, *supra* note 5.
12. *See id.*
13. 1994 Ga. Laws 1233, § 1, at 1778 (codified at O.C.G.A. § 31-2-7 (Supp. 2004)).
14. Fact Sheet provided by Thomas Boller, Lobbyist, Boller, Sewell & Segars, Inc. 1 (Aug. 12, 2000) (on file with the Georgia State University Law Review) [hereinafter Fact Sheet].
15. 1997 Ga. Laws 280, § 1, at 710 (codified at O.C.G.A. § 31-2-7 (Supp. 2004)).

management system previously approved by the DHR from complying with the new DHR regulations.[16] Further, Act 280 preserved any trench length reductions that a "prior approved system" had received from the DHR.[17] Only one manufacturer met this definition of a prior approved system.[18] Essentially, Act 280 gave this manufacturer preferential treatment, while other manufacturers with similar products were subject to DHR testing and evaluation. The sponsors of HB 992 introduced the bill to eliminate this preference and to establish a level playing field for septic tank manufacturers in Georgia.

Bill Tracking

HB 992

Representatives Karla Drenner, Michele Henson, and Pat Dooley of the 57th, 55th, and 33rd districts, respectively, sponsored HB 992.[19] The House first read HB 992 on April 14, 2003 and read it for a second time on April 17, 2003.[20] The Speaker assigned the bill to the House Committee on Natural Resources and Environment, which favorably reported the bill by substitute on February 17, 2004.[21]

The substituted version of HB 992 added a provision that would have allowed the installation and use of septic tanks that received prior approval, including those given a 50% trench length reduction.[22] Additionally, the substituted version of the bill would have protected these septic tanks from new DHR regulations.[23] However, the provision would not have applied if the DHR, or more than half of the health districts in Georgia, could have provided scientific evidence that either these septic tanks were unsatisfactory or they posed a risk to public health.[24]

16. *Id.*
17. *Id.*
18. Fact Sheet, *supra* note 14, at 1.
19. HB 992, as introduced, 2003 Ga. Gen. Assem.
20. State of Georgia Final Composite Status Sheet, HB 992, Apr. 14, 2003 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 992, Apr. 17, 2003 (May 19, 2004).
21. *See* State of Georgia Final Composite Status Sheet, HB 992, Feb. 17, 2004 (May 19, 2004).
22. *See* HB 992 (HCS), 2004 Ga. Gen. Assem.
23. *See id.*
24. *Id.*

The substitute unanimously passed the House Committee on Natural Resources and Environment, but the bill did not advance to the House floor in time for a vote that would have sent HB 992 to the Senate.[25] As a result of its failure to progress to the Senate on the 33rd day, the bill died.[26] There were plans to substitute HB 1408 with the Committee's version of HB 992 on the floor of the House, but those plans never materialized.[27]

SB 367

Senator Michael Meyer von Bremen of the 12th district sponsored SB 367.[28] The Senate first read SB 367 on April 7, 2003 and referred the bill to the Senate Committee on Regulated Industries and Utilities on the same day.[29] SB 367 is identical to HB 992.[30] The Senate took no further action on SB 367 after it referred the bill to committee.[31]

Analysis

HB 992's original purpose was to level the playing field for septic tank manufacturers in Georgia.[32] There are four major septic tank manufacturers that sell their products in Georgia.[33] One of those manufacturers, Infiltrator, has a septic tank system that meets the definition of a "prior approved system" under the current statute.[34] As a result, Infiltrator receives a 50% trench length reduction.[35] However, Infiltrator is the only one of the four major manufacturers that does not have a manufacturing plant located in Georgia.[36] Thus,

25. Memorandum in Support of the Floor Substitute to House Bill 1408, at 1 (on file with the Georgia State University Law Review) [hereinafter Floor Substitute Memorandum]; State of Georgia Final Composite Status Sheet, HB 992, Feb. 17, 2004 (May 19, 2004).

26. *See* Floor Substitute Memorandum, *supra* note 25, at 1.

27. *See id.*; Boller Interview, *supra* note 1.

28. *See* SB 367, as introduced, 2003 Ga. Gen. Assem.

29. *See* State of Georgia Final Composite Status Sheet, SB 367, Apr. 7, 2003 (May 19, 2004).

30. *Compare* HB 992, as introduced, 2003 Ga. Gen. Assem., *with* SB 367, as introduced, 2003 Ga. Gen Assem.

31. State of Georgia Final Composite Status Sheet, HB 992, Apr. 7, 2004 (May 19, 2004).

32. *See* Boller Interview, *supra* note 1 (stating that the law should apply to all manufacturers).

33. Floor Substitute Memorandum, *supra* note 25, at 2.

34. *Id.*; Fact Sheet, *supra* note 14, at 1; *see also* 1997 Ga. Laws 280, § 1, at 710 (codified at O.C.G.A. § 31-2-7 (Supp. 2004)).

35. *See* Telephone Interview with Rep. Karla Drenner, House District No. 57 (Apr. 15, 2004) [hereinafter Drenner Interview].

36. Floor Substitute Memorandum, *supra* note 25, at 2; *see* Boller Interview, *supra* note 1.

although the intent behind HB 992 was to establish more equality among these manufacturers, the Georgia legislature has in fact given an unfair market advantage to Infiltrator, a foreign corporation.[37]

As introduced, HB 992 would have eliminated the definition of a "prior approved system," which has given Infiltrator its unfair market advantage.[38] Additionally, the bill as originally proposed would have allowed the DHR to regulate all septic tanks installed in Georgia, including the granting or revoking of trench length reductions.[39] Representative Drenner felt this was an important provision of the bill because she believed scientific standards, not the Georgia Legislature, should ultimately regulate septic tanks and trench length reductions.[40] Additionally, even though Infiltrator received its 50% trench length reduction by statute, the other septic tank manufacturers had managed to get the 50% reduction through alternative means.[41] Passage of HB 992, as introduced, would have eliminated the 50% trench length reduction for all of the manufacturers.[42]

The Georgia Home Builder's Association opposed the original version of the bill, and their opposition was key in generating the House Committee's substitute.[43] The House Committee's substitute added a provision that would have maintained the 50% trench length reduction that all four major manufacturers currently enjoy.[44] The House Committee's substitute also provided for the deletion of "prior approved system," which would have eliminated the advantage gained by Infiltrator in having its 50% trench length reduction protected by statute.[45]

Infiltrator opposed the bill, as substituted, but the other three septic tank manufacturers, along with the Georgia Home Builder's Association, supported the substitution.[46] Representative Drenner was unhappy with the House Committee's substitution because it would have continued to statutorily mandate trench length reduction.[47] Even

37. *See* Drenner Interview, *supra* note 35; Boller Interview, *supra* note 1.
38. *See* HB 992, as introduced, 2003 Ga. Gen. Assem.; Fact Sheet, *supra* note 14, at 2.
39. HB 992, as introduced, 2003 Ga. Gen. Assem.
40. Drenner Interview, *supra* note 35.
41. *See* Boller Interview, *supra* note 1.
42. *See* HB 992, as introduced, 2003 Ga. Gen. Assem.
43. *See* Boller Interview, *supra* note 1.
44. *See* HB 992 (HCS), 2004 Ga. Gen. Assem.
45. *See id.*; Boller Interview, *supra* note 1.
46. *See* Floor Substitute Memorandum, *supra* note 25, at 2; Boller Interview, *supra* note 1.
47. *See* Drenner Interview, *supra* note 35.

though the substituted version of the bill would have maintained the status quo, thus satisfying three of the four septic tank manufacturers doing business in Georgia and the Georgia Home Builder's Association, the DHR rules governing septic tanks would have regulated new entrants into the septic tank market.[48]

The bill, as substituted, would have maintained the status quo in the septic tank market and would have kept septic tank installation costs down.[49] In spite of these advantages, the bill failed to make it to the floor for a vote.[50] Representative Larry "Butch" Parrish, Chairman of the House Committee on Economic Development and Tourism and member of the Rules Committee, was instrumental in keeping the bill, as substituted, from going to the floor of the House for a vote.[51] As a result, Infiltrator will maintain its 50% trench length reduction provided by statute, and all other septic tank manufacturers must comply with the new DHR rules, which go into effect this summer.[52] These new rules will cap trench length reductions at 25%.[53] Thus, while companies that operate manufacturing plants in Georgia must comply with the more stringent DHR rules, Infiltrator will continue to enjoy its 50% trench length reduction.[54] This could potentially result in job losses for Georgia workers.[55]

48. *See* Floor Substitute Memorandum, *supra* note 25, at 3.

49. *See id.*; DHR REPORT, *supra* note 5, at 1-2.

50. State of Georgia Final Composite Status Sheet, HB 992, Apr. 7, 2004 (May 19, 2004); *see* Drenner Interview, *supra* note 35.

51. *See* Drenner Interview, *supra* note 35; *Representative Larry "Butch" Parrish*, Georgia House of Representatives, *at* http://www.legis.state.ga.us/legis/2003_04/House/bios/Parrish,%20Butch/Parrish,%20Butch%20h102.html (last visited May 16, 2004) (on file with the Georgia State University Law Review).

52. *See* 1997 Ga. Laws 280, § 1, at 710 (codified at O.C.G.A. § 31-2-7 (Supp. 2004)).

53. *See* Drenner Interview, *supra* note 35.

54. *Compare* 1997 Ga. Laws 280, § 1, at 710 (codified at O.C.G.A. § 31-2-7 (Supp. 2004)) *with* HB 992 (HCS), 2004 Ga. Gen. Assem.

55. Drenner Interview, *supra* note 35.

Even if HB 992, as substituted, had passed an unfair market advantage would have continued to be written into the statute for trench length reductions.[56] Four manufacturers would have enjoyed a 50% reduction in trench length, while new manufacturers or entrants into the Georgia market would have had to comply with the DHR rules capping trench length reductions at 25%.[57]

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56. *See* Floor Substitute Memorandum, *supra* note 25, at 1; HB 992 (HCS), 2004 Ga. Gen. Assem.
57. *See* HB 992 (HCS), 2004 Ga. Gen. Assem.