

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL1634

By: Representative Flannigan

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 402 OF 1977, THE ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT [ARK. STAT. 19-5401 ET SEQ.] TO DEFINE ALTERNATE SYSTEM AND SEPTIC TANK MANUFACTURER; TO LEVY ADDITIONAL FEES TO DEFRAY THE COSTS OF EXPANDED PROGRAM ACTIVITIES AT THE DEPARTMENT OF HEALTH; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 3 of Act 402 of 1977, the same being Arkansas Statutes 19-5403, is hereby amended by adding two new subsections as follows:

"O. 'Alternate and Experimental System' means a non-standard individual sewage disposal system or treatment system which is classified as experimental in order to evaluate its potential effectiveness.

P. 'Septic Tank Manufacturer' means a person, firm, corporation or association who manufactures septic tanks, package treatment plants or other components for individual sewage disposal or treatment systems."

SECTION 2. Section 9 of Act 402 of 1977, the same being Arkansas Statutes 19-5409, is hereby amended to read as follows:

"Section 9. A. It shall be unlawful for any person, firm, corporation, association, municipality, or governmental agency to construct, alter, repair, extend or operate an individual sewage disposal system or alternate and experimental system installed after July 1, 1977 unless a valid permit has been issued by the Division of Sanitarian Services of the Arkansas Department of Health or its authorized agent for the specific construction, alteration, repair, extension or operation proposed, except that emergency repairs may be undertaken without prior issuance of a permit, provided a permit is subsequently obtained within ten (10) working days after the repairs are made.

B. It shall be unlawful for any person, firm, corporation, or association

to begin construction, alteration, repair or extension of any individual sewage disposal system or alternate and experimental system, owned by any other person, firm, corporation, association, municipality or governmental agency until the owner first obtains a valid permit issued by the Division of Sanitarian Services of the Department of Health or its authorized agent.

C. It shall be unlawful for any installer to begin construction, alteration, repair or extension of any individual sewage disposal system or alternate and experimental system, owned by any other person, firm, corporation, association, municipality or governmental agency until the installer first notifies the authorized agent of the date he plans to begin work on said system.

D. (1) It shall be unlawful for a Septic Tank Manufacturer to operate a business in the State of Arkansas or to do business in the State of Arkansas unless he holds a valid registration issued by the Arkansas Department of Health.

(2) A fee of one hundred dollars (\$100.00) shall be levied annually for the registration of Septic Tank Manufacturers.

E. All applications for permits, licenses, or review certificates shall be made on a form which includes such information as may be required by the Division of Sanitarian Services of the Department of Health or its authorized agent to establish compliance with the provisions of Act 402 of 1977, as amended, and any regulations adopted thereunder.

F. Except as provided in Section 7 of this Act, a permit for the construction, alteration, repair, extension or operation of an individual sewage disposal system or alternate and experimental system shall be refused where community sewerage systems are reasonably available or economically feasible, or in instances where the issuance of such permit is in conflict with other applicable laws and regulations, or where the issuance of such permit is in conflict with the public policy declared by this Act.

G. A fee of fifteen dollars (\$15.00) shall be levied for the issuance of each permit issued under the provisions of this Act. Provided, however, that it shall not be necessary to pay an additional fee to obtain a permit to repair an individual sewage disposal system or alternate and experimental system installed under a permit for which a fee has been paid under the provisions of this Act.

H. A fee of fifty dollars (\$50.00) shall be levied annually for the

registration of installers.

I. A Designated Representative must attend at least one annual training course provided by the Department of Health to maintain certification.

J. The fee for the issuance of a review certificate under the provisions of Act 402 of 1977, as amended, to the person developing a subdivision shall be a minimum of fifteen dollars (\$15.00) for one lot and two dollars and fifty cents (\$2.50) for each following lot with a maximum of five hundred dollars (\$500.00).

K. Permit and Regulation fees collected under this Act shall be deposited in the State Treasury as Special Revenues to be credited, after deducting one and one-half percent (1½%) thereof for credit to the Constitutional and Fiscal Agencies Fund as provided by law, as follows:

(i) Two thirds (2/3) of the net fees collected for permits issued under the provisions of subsection G. of this Section, and all of the net fees collected under the provisions of subsections D., H. and J. of this Section, shall be credited to the 'Public Health Fund,' and such moneys shall be used only for the operation of the Division of Sanitarian Services of the Department of Health; and

(ii) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the Disbursing Officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the funds outlined in Section 9, Subsection K (i) of this Act that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year; and

(iii) One-third (1/3) of the fees collected for permits issued under the provisions of subsection G. of this Section shall be credited to a special fund to be known as the 'Individual Sewage Disposal Systems Improvement Fund,' which is hereby established on the books of the State Treasurer, with such moneys to be used by the Division of Sanitarian Services of the Department of Health for, and in the manner recommended by the Advisory Committee on Individual Sewage Disposal Systems, for implementation of the utilization and application of alternate and experimental individual sewage disposal systems, as set forth in this Act.

L. Designated representatives may charge reasonable fees for percolation tests, system designs and final inspections where said fees are based on

generally accepted wage rates for work of the type and on generally accepted charges for equipment and mileage.

M. Provided, that the requirements of this Act shall not apply to any individual sewage disposal system or alternate and experimental system which is situated on a tract of land ten (10) acres or larger, in which the field line or sewage disposal line is no closer than 200 feet to the property line."

SECTION 3. Section 10 of Act 402 of 1977, the same being Arkansas Statute 19-5410, is hereby amended to read as follows:

"Section 10. A. A person who shall willingly and knowingly violate the provisions of Act 402 of 1977, as amended, shall be liable to the party aggrieved or damaged by that violation for the cost of suit, including a reasonable attorney's fee, actual damages and additional punitive damages equal to twenty-five percent (25%) of the damages proven by the aggrieved party, to be taxed by the Court where the same is heard on an original action, by appeal or otherwise, and recovered by a suit at law in any court of competent jurisdiction, provided that the party aggrieved or damaged thereby gives twenty (20) days' written notice of any violation of this Act to the violator. Provided, however, that approval by the Division of Sanitarian Services of the Department of Health or its authorized agent of a requested variation from the rules and regulations adopted pursuant to Act 402 of 1977, as amended, shall not be construed as a violation of this Act.

B. The Division of Sanitarian Services of the Department of Health or its authorized agent is authorized to require the property owner to take the necessary action to correct the malfunctioning individual sewage disposal system within thirty (30) working days of being notified, after which, each day's failure to take corrective action shall be punishable by a fine of not less than five dollars (\$5.00) and no more than fifteen dollars (\$15.00).

C. Any person, firm, corporation, or association who violates any of the provisions of Act 402 of 1977, as amended, or any Rules and Regulations promulgated under the authority of Act 402 of 1977, as amended, shall, upon conviction, be punished by a fine of not less than fifteen dollars (\$15.00) nor more than twenty-five dollars (\$25.00) for the first offense, and for each succeeding offense shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment not exceeding one (1) month, or both."

SECTION 4. Section 14 of Act 402 of 1977, the same being Arkansas Statute 19-5414, is hereby amended to read as follows:

"Section 14. The Division of Sanitarian Services of the Department of Health and its authorized agents, when performing their duties as prescribed by established policies and procedures, are exempt from any liability for damages or claims resulting from its approval or disapproval of the installation and/or operation of any individual sewage disposal system."

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly that due to current revenue short falls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for additional fees to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of additional fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

