

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 28, 2005

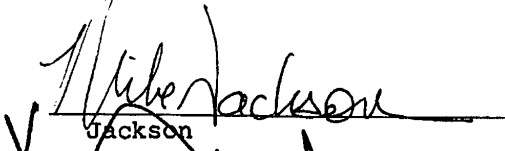
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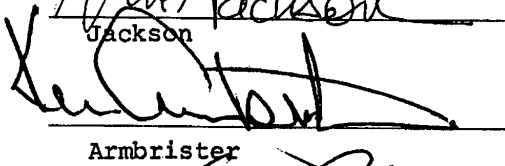
Honorable David Dewhurst  
President of the Senate

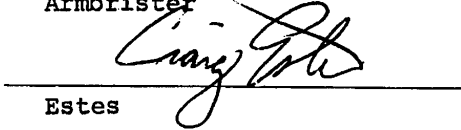
Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 2510 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

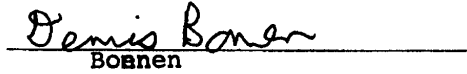
  
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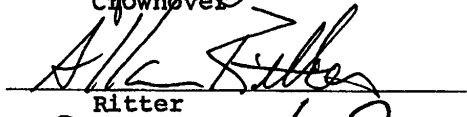
  
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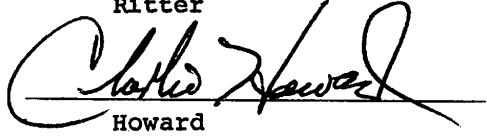
\_\_\_\_\_  
Fraser

Madla On the part of the Senate

  
Boren

  
Crownover

  
Ritter

  
Howard

\_\_\_\_\_  
On the part of the House

### Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 2510

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the regulation of on-site sewage disposal systems and  
3 the maintenance of those systems; imposing administrative and  
4 criminal penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 366.0515, Health and Safety Code, is  
7 amended by amending Subsections (a) and (g) and adding Subsections  
8 (h), (i), (j), (k), (l), (m), (n), and (o) to read as follows:

9 (a) An authorized agent or the commission may not condition  
10 a permit or the approval of a permit for an on-site sewage disposal  
11 system using aerobic treatment for a single-family residence  
12 [~~located in a county with a population of less than 40,000~~] on the  
13 system's owner contracting for the maintenance of the system.

14 (g) The owner of a single-family residence [~~located in a~~  
15 ~~county with a population of less than 40,000~~] shall maintain the  
16 system directly or through a maintenance contract. The commission  
17 shall adopt rules governing:

18 (1) the training in system maintenance to be provided  
19 to an owner who elects to maintain the system directly; and

20 (2) the maintenance of a system by the owner of the  
21 system.

22 (h) If the owner of an on-site sewage disposal system using  
23 aerobic treatment for a single-family residence elects to maintain  
24 the system directly, the owner must obtain from the manufacturer or

1 installer of the system an amount of on-site training specified by  
2 commission rule not to exceed six hours, either at the time of  
3 acceptance of the system from the installer or at the time of an  
4 on-site maintenance visit by a maintenance company under the  
5 initial term of the maintenance contract for the system, if  
6 applicable. The training must include instruction regarding the  
7 importance to public health and safety of proper maintenance of the  
8 system and a demonstration of the procedure for performing a  
9 scheduled maintenance. On the owner's completion of the training,  
10 the manufacturer or installer shall provide the owner with a  
11 certificate or letter stating that the owner has received the  
12 required training. An owner who elects to maintain the owner's  
13 system is subject to any inspection and reporting requirements  
14 imposed by an authorized agent or the commission under Subsection  
15 (k) applicable to a maintenance company that contracts to maintain  
16 a system. If the residence is sold, the new owner, not later than  
17 the 30th day after the date the owner takes possession of the  
18 property, must obtain the training required by this subsection from  
19 an installer certified by the manufacturer of the system under  
20 Subsection (n) or contract with a maintenance company for the  
21 maintenance of the system.

22 (i) An authorized agent or the commission may periodically  
23 inspect an on-site sewage disposal system using aerobic treatment  
24 for a single-family residence that is maintained directly by the  
25 owner of the system. The commission by rule may specify the  
26 procedure for conducting the inspections and the frequency with  
27 which inspections must be conducted, except that inspections may

1 not be required more often than once every five years.

2 (j) Notwithstanding Subsections (a) and (b), an authorized  
3 agent or the commission may condition the permit or the approval of  
4 a permit for an on-site sewage disposal system using aerobic  
5 treatment for a single-family residence on the owner's contracting  
6 with a maintenance company for the maintenance of the system if:

7 (1) the authorized agent or commission determines that  
8 the system is a nuisance or has failed a periodic inspection under  
9 Subsection (i);

10 (2) the owner fails to timely inspect the system or  
11 submit a report on the inspection as required by Subsection (k), if  
12 applicable, for three consecutive intervals; or

13 (3) the owner is notified under Section 366.017 at  
14 least three times during a 12-month period that the system is  
15 malfunctioning.

16 (k) If, under Subsection (b), an authorized agent or the  
17 commission conditions approval of a permit for an on-site sewage  
18 disposal system using aerobic treatment on the system's owner  
19 contracting for the maintenance of the system, the order,  
20 resolution, or rule may require the maintenance company to:

21 (1) inspect the system at specified intervals;

22 (2) submit a report on each inspection to the  
23 authorized agent or commission; and

24 (3) provide a copy of each report submitted under  
25 Subdivision (2) to the system's owner.

26 (l) A maintenance company that violates a provision of an  
27 order, resolution, or rule described by Subsection (k) is subject

1 to an administrative penalty. The commission may recover the  
2 penalty in a proceeding conducted as provided by Subchapter C,  
3 Chapter 7, Water Code, or the authorized agent may recover the  
4 penalty in a proceeding conducted under an order or resolution of  
5 the agent. Notwithstanding Section 7.052, Water Code, the amount  
6 of the penalty for the first violation of that order, resolution, or  
7 rule is \$200, and the amount of the penalty for each subsequent  
8 violation is \$500.

9 (m) If a maintenance company violates an order, resolution,  
10 or rule described by Subsection (k) three or more times, the  
11 commission, in the manner provided by Subchapter G, Chapter 7,  
12 Water Code, may revoke the license or registration of the  
13 maintenance company or any person employed by the maintenance  
14 company issued under:

- 15 (1) Section 26.0301, Water Code;  
16 (2) Chapter 37, Water Code; or  
17 (3) Section 366.071 of this code.

18 (n) A person must be certified by the manufacturer of an  
19 on-site sewage disposal system using aerobic treatment to maintain  
20 the system under a maintenance contract with the owner of the system  
21 or to provide training to the owner in maintenance of the system. A  
22 manufacturer may not unreasonably withhold certification and,  
23 except as otherwise provided by this subsection, must offer the  
24 certification to persons who are not employees of the manufacturer  
25 on the same terms as the manufacturer offers the certification to  
26 the manufacturer's employees. To be certified by a manufacturer, a  
27 person who is not an employee must:

1           (1) successfully complete a course approved by the  
2 commission that provides up to 32 hours of training in maintenance  
3 of on-site sewage disposal systems using aerobic treatment;

4           (2) be employed by a maintenance company at least one  
5 employee of which holds a license as:

6                   (A) an installer, if the commission recognizes  
7 only one level of installer; or

8                   (B) the highest level of installer recognized by  
9 the commission, if the commission recognizes more than one level of  
10 installer;

11           (3) meet all of the manufacturer's criteria and  
12 requirements for entering into a business relationship; and

13           (4) satisfactorily complete any other reasonable  
14 requirements imposed by the manufacturer for certification.

15           (o) Subsection (n) does not allow the commission or an  
16 authorized agent to dictate to the manufacturer of on-site sewage  
17 disposal systems using aerobic treatment the person who is  
18 authorized to maintain the systems or to provide training in  
19 maintenance of the systems in a particular area. That subsection  
20 merely facilitates the expansion of the pool of persons who are  
21 qualified to maintain or to provide training in maintenance of  
22 those systems and protects the rights of owners and manufacturers  
23 of those systems. [If the owner elects to maintain the system  
24 directly, the owner must obtain training in system maintenance from  
25 the authorized agent or the installer.]

26           SECTION 2. Section 366.071(a), Health and Safety Code, is  
27 amended to read as follows:

1 (a) A person who constructs, installs, alters, extends,  
2 services, maintains, or repairs an on-site sewage disposal system  
3 or any part of an on-site sewage disposal system for compensation  
4 must hold a license or registration issued by the commission under  
5 Chapter 37, Water Code.

6 SECTION 3. Subchapter E, Chapter 7, Water Code, is amended  
7 by adding Section 7.1735 to read as follows:

8 Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE  
9 DISPOSAL SYSTEM. (a) A person commits an offense if the person  
10 knowingly violates an order or resolution adopted by an authorized  
11 agent under Section 366.0515, Health and Safety Code.

12 (b) An offense under this section is a Class C misdemeanor.

13 SECTION 4. Section 366.071(d), Health and Safety Code, is  
14 repealed.

15 SECTION 5. (a) The changes in law made by this Act apply  
16 only to a violation committed on or after the effective date of this  
17 Act. For purposes of this section, a violation is committed before  
18 the effective date of this Act if any element of the violation  
19 occurs before that date.

20 (b) A violation committed before the effective date of this  
21 Act is covered by the law in effect when the violation was  
22 committed, and the former law is continued in effect for that  
23 purpose.

24 SECTION 6. The Texas Commission on Environmental Quality  
25 shall be prepared to accept applications for licenses or  
26 registrations described by Section 366.071(a), Health and Safety  
27 Code, as amended by this Act, not later than March 1, 2006.

1           SECTION 7. (a) Except as provided by Subsection (b) of this  
2 section, this Act takes effect September 1, 2005.

3           (b) Section 2 of this Act takes effect September 1, 2006.

**House Bill 2510**  
Conference Committee Report  
Section-by-Section Analysis

**HOUSE VERSION**

**SECTION 1.** Amends Subsection (g) and adds Subsections (h), (i), and (j), Section 366.0515, Health and Safety Code, as follows:

No equivalent provision.

(g) Requires the commission to adopt rules governing the training in on-site sewage disposal system maintenance to be provided to an owner who elects to maintain the system directly, and governing the maintenance of a system by the owner of the system.

No equivalent provision.

**SENATE VERSION**

**SECTION 1.** Amends Subsections (a) and (g) and adds Subsections (h), (i), (j), (k), and (l), Section 366.0515, Health and Safety Code, as follows:

(a) Provides that the Texas Commission on Environmental Quality cannot condition a permit or approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system. (FA1)

(g) Provides that the owner who maintains a system directly shall maintain the system in accordance with information provided by the installer of the system under Subsection (f). (FA1)

No equivalent provision.

**CONFERENCE**

**SECTION 1.** Amends Subsections (a) and (g) and adds Subsections (h), (i), (j), (k), (l), (m), (n), and (o), Section 366.0515, Health and Safety Code, as follows:

(a) Same as Senate version.

(g) Same as House version.

(h) If the owner of an on-site sewage disposal system using aerobic treatment for a single-family residence elects to maintain the system directly, the owner must obtain from the manufacturer or installer of the system an amount of on-site training specified by commission rule not to exceed six hours, either at the time of acceptance of the system from the installer or at the time of an on-site maintenance visit by a maintenance company under the initial term of the maintenance contract for the system, if applicable. The training must include instruction regarding the importance to public health and safety of proper maintenance of the system and a demonstration of the procedure for performing a scheduled maintenance. On the owner's

**House Bill 2510**  
**Conference Committee Report**  
**Section-by-Section Analysis**

**HOUSE VERSION**

**SENATE VERSION**

**CONFERENCE**

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

completion of the training, the manufacturer or installer shall provide the owner with a certificate or letter stating that the owner has received the required training. An owner who elects to maintain the owner's system is subject to any inspection and reporting requirements imposed by an authorized agent or the commission under Subsection (k) applicable to a maintenance company that contracts to maintain a system. If the residence is sold, the new owner, not later than the 30th day after the date the owner takes possession of the property, must obtain the training required by this subsection from an installer certified by the manufacturer of the system under Subsection (h) or contract with a maintenance company for the maintenance of the system.

(i) An authorized agent or the commission may periodically inspect an on-site sewage disposal system using aerobic treatment for a single-family residence that is maintained directly by the owner of the system. The commission by rule may specify the procedure for conducting the inspections and the frequency with which inspections must be conducted, except that inspections may not be required more often than once every five years.

(j) Notwithstanding Subsections (a) and (b), an authorized agent or the commission may condition the permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the owner's contracting with a maintenance company for the

**House Bill 2510**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(h), (i), (j) Provide requirements for maintenance company inspections and reports and the consequences of any violations.

No equivalent provision.

(h), (i), (j) Substantially the same as House version. (FA1)

(k) Provides that a person must be certified by the manufacturer of an on-site sewage disposal system using aerobic treatment to maintain the system under a maintenance contract with the owner of the system or to provide training to the owner in maintenance of the system. A manufacturer may not unreasonably withhold certification and, except as otherwise provided by this subsection, must offer the certification to persons who are not employees of the manufacturer on the same terms as the manufacturer offers the certification to the manufacturer's employees. To be certified by a manufacturer, a person who is not an employee must:

(1) successfully complete a course approved by the commission that provides up to 32 hours of training in

maintenance of the system if:

- (1) the authorized agent or commission determines that the system is a nuisance or has failed a periodic inspection under Subsection (i);
- (2) the owner fails to timely inspect the system or submit a report on the inspection as required by Subsection (l), if applicable, for three consecutive intervals; or
- (3) the owner is notified under Section 366.017 at least three times during a 12-month period that the system is malfunctioning.

(k), (l), (m) Substantially the same as House version.

(n) Same as Senate version.