

SENATE BILL REPORT

E2SHB 1458

As Reported By Senate Committee On:
Water, Energy & Environment, March 31, 2005

Title: An act relating to managing on-site sewage disposal systems in marine areas.

Brief Description: Concerning the management of on-site sewage disposal systems in marine areas.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hunt, Dickerson, McCoy, B. Sullivan, Williams, Haigh, Appleton, Linville, Chase, Dunshee, Simpson, Upthegrove, Moeller and McDermott).

Brief History: Passed House: 3/14/05, 56-41.

Committee Activity: Water, Energy & Environment: 3/29/05, 3/31/05 [DPA, DNP].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass as amended.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt, Honeyford and Mulliken.

Staff: Sam Thompson (786-7413)

Background: The State Board of Health (SBOH) has adopted standards for on-site sewage systems (OSS). Permits are required for installing, altering, extending, or relocating OSS. Local boards of health issue OSS permits, enforce the standards, and may adopt more stringent local standards.

An On-Site Wastewater Advisory Committee advising the Department of Health (DOH) has developed several recommendations regarding OSS, including draft regulations changing operating and maintenance standards.

Concern has arisen regarding pollution and low dissolved oxygen levels caused by failing OSS in marine areas. Pollution and low dissolved oxygen levels have killed fish and led to shellfish bed closure and inability to meet water quality standards.

Summary of Amended Bill: To address public health and environmental concerns, local health jurisdictions in 12 Puget Sound counties must designate marine recovery areas (MRA) and develop on-site sewage disposal system (OSS) program implementation plans (local plans) to ensure that OSS are functioning properly. The Department of Health (DOH) will review local plans and enter into contracts with local health jurisdictions to ensure that they make progress on local plans. A Department of Ecology (DOE)-administered OSS repair and replacement funding assistance program is established for all counties with marine waters, and

DOE will also fund pilot programs promoting alternative OSS. DOH will report to the legislature on progress in designating MRA, developing and implementing local plans, recommending certification of OSS operation and maintenance personnel, and financial assistance programs.

Affected OSS. OSS regulated under a water quality discharge permit (i.e., National Pollutant Discharge Elimination System--NPDES--permit) are excluded.

Proposed MRA. Local health officers will, by mid-2006, propose MRA where OSS significantly contribute to public health and environmental concerns associated with: (1) threatened or downgraded shellfish growing areas; (2) violation of federal clean water standards due to low-dissolved oxygen or fecal coliform; (3) marine waters where nitrogen has been identified as a contaminant of concern; or (4) marine waters with low-dissolved oxygen levels.

After mid-2006, local health officers may designate additional areas meeting applicable criteria. Where DOH recommends MRA designation or expansion, the local health officer must respond within 90 days.

Local Plans. In counties with proposed MRA, local health officers must, by mid-2007, develop and approve local plans that include designating MRA. DOH may grant a 12-month extension where local health jurisdictions demonstrate substantial progress toward completing local plans.

Local plans must describe how local health jurisdictions will: (1) find failing OSS and ensure necessary repairs; (2) find unknown OSS and ensure inspection and repair, as necessary; (3) identify additional OSS requirements to mitigate risks; (4) educate OSS owners regarding their obligations and provide them with pertinent information; (5) ensure that OSS owners complete inspections required by the State Board of Health (SBOH); (6) maintain all SBOH-required records; (7) enforce OSS permit requirements; and (8) if necessary, recommend alternatives to conventional OSS.

Local boards of health must provide a 60-day public comment period and hold a public hearing on proposed local plans. Local health officers must submit draft plans to DOH for review and comment. Local boards of health must approve local plans after considering public comments. Within 10 days of adoption, local health officers must submit local plans to DOH for review and approval.

State Role: Local Plan Review, Standards, Assistance and Monitoring. DOH must review local plans to ensure that all required elements have been addressed. Within 30 days of receipt, DOH must approve a local plan or specify reasons for not doing so and recommend changes. Local health officers must implement local plans upon receipt of DOH approval or after 30 days without DOH notification. If DOH denies approval, local boards of health may appeal to the SBOH, which will have final resolution.

The SBOH must adopt rules addressing environmental impacts associated with low-dissolved oxygen in marine waters and may adopt additional criteria for approval of local plans.

DOH will provide assistance to local health jurisdictions on developing local plans, identifying methods for finding unknown OSS, and developing or enhancing data systems, with priority to OSS that are located in or could affect MRA.

DOH will contract with affected counties to implement approved local plans and to develop or enhance data systems. Contracts will include state funding assistance. Compliance schedules must require that within MRA, local health jurisdictions find failing and unknown OSS, work with owners to make needed repairs, and show improvement in OSS included in data systems and in the percentage of OSS that have had required inspections. Contracts must also provide for state assistance in updating local plans. Beginning in mid- 2009, contracts may adopt revised compliance dates where substantial progress has been demonstrated in implementing local plans.

Reporting by OSS Inspectors. Local health officers must require OSS inspectors to submit reports to local health jurisdictions regarding failing OSS.

Electronic Data Systems. Local health officers must develop and maintain electronic data systems (data systems) of all OSS within MRA to enable local health jurisdictions to actively manage OSS. DOH must work with local health jurisdictions with MRA and the OSS industry to facilitate information sharing. Data systems must be compatible with data systems used throughout the local health jurisdiction.

State Financial Assistance: OSS Repair and Replacement. DOE will administer a financial assistance program providing grants and low-interest or deferred-payment loans for repairing and replacing failing OSS in all counties will marine waters. Homeowners with annual incomes below \$25,000 are eligible for 100 percent grant financing; homeowners with incomes between \$25,000 and 150 percent of the state median family income (currently \$66,000--150 percent is approximately \$99,000) are eligible for a declining portion of grant financing relative to loan financing, and homeowners with greater incomes are only eligible for loan financing. Grant funding will be larger in the program's first five years to encourage repair and replacement of failing OSS as early as possible.

DOE will design the application process with the Puget Sound Action Team, DOH and DOE, and may contract with private financial institutions to administer banking functions. Applications must be readily accessible, easy to understand and complete by homeowners, and prioritized based on reductions in environmental and public health problems. Applicants must inspect and maintain OSS to applicable standards. From mid-2005 to mid-2007, DOE will place a high priority on providing financial assistance within Hood Canal watersheds.

State Financial Assistance: Alternative OSS Pilot Programs. DOE will offer grants and loans to local health jurisdictions proposing pilot programs to encourage and fund, within MRA, alternative OSS (non-conventional gravity or pressure distribution systems) better reducing nitrogen discharges, and waterless toilets (toilets storing or reducing wastes to compost, ash, or an accumulation for removal and disposal at an approved site). DOE will compile and annually provide information to DOH and local health jurisdictions regarding performance of systems funded by these programs.

Reports to Legislature. By the end of 2005, DOH must provide a report and recommendations to the legislature regarding OSS financial assistance programs. By the end of 2007, DOH

must report to the legislature on: progress in designating MRA and developing and implementing local plans; sanitary surveys of shoreline areas; barriers to implementing local plans and recommendations for improving assistance to local health jurisdictions; and recommendations for professional certification of OSS operation and maintenance personnel.

Amended Bill Compared to Original Bill: Deletes DOE authority to propose MRA. Includes additional criteria for proposing MRA.

Clarifies that local health jurisdictions must continue to fine failing and unknown OSS after a mid-2010 deadline. Requires OSS inspectors to submit reports to local health jurisdictions regarding failing systems.

Specifies that DOE, rather the Department of Community, Trade & Economic Development, will administer financial assistance programs. Establishes homeowner income standards for financial assistance and requires high priority on assistance within Hood Canal watersheds.

Authorizes financing for local pilot programs funding alternative OSS and waterless toilets and requires DOE to provide information to DOH and local health jurisdictions regarding performance of these funded systems.

Requires DOH to report to the legislature regarding OSS financial assistance programs.

Modifies null and void clause to exclude provisions establishing state financial assistance programs and legislative reporting requirements concerning those programs.

Makes several non-substantive grammatical changes.

Appropriation: None.

Fiscal Note: Available for substitute bill; fiscal note for amended bill requested on April 1, 2005.

Committee/Commission/Task Force Created: No.

Effective Date: The bill has an emergency clause and takes effect July 1, 2005; however, all provisions except those establishing state financial assistance programs and legislative reporting requirements concerning those programs are null and void unless funded in the budget.

Testimony For: This bill is a critical first step in addressing environmental problems that have been confirmed by studies; it appropriately establishes a collaborative effort between state and local government. There are half a million OSS in the Puget Sound region, and problems caused by failing OSS must be addressed. The governor's support of necessary funding is a positive sign. We must get out of a cycle of closure of shellfish growing areas.

Testimony Against: This bill is unnecessary. An OSS regulatory framework is already in place, and is currently being updated by DOH. Remedies should be site-specific, and can be addressed with new technology developed by OSS designers and manufacturers.

Who Testified: PRO: Genessee Adkins, Futurwise; Bill Dewey, Taylor Shellfish Co.; Terry Hull, Puget Sound Action Team; Janice Adair, Department of Health; Bruce Wishart, People

for Puget Sound; Melodie Selby, Department of Ecology. OTHER: Terry Jeffries, Olympic Peninsula Realtors.

CON: Andy Cook, Building Industry Association of Washington; Jerry Obendorf, Mason County Association of Realtors.