

SENATE BILL REPORT

SB 5431

As Reported By Senate Committee On:
Water, Energy & Environment, March 2, 2005
Ways & Means, March 7, 2005

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

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

Sponsors: Senators Spanel, Rockefeller, Pridemore, Poulsen, Kohl-Welles, Doumit, Regala, Fraser, Kline and McCaslin.

Brief History:

Committee Activity: Water, Energy & Environment: 2/10/05, 3/2/05 [DPS-WM, w/oRec].
Ways & Means: 3/7/05 [DP2S, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5431 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Pridemore and Regala.

Minority Report: That it be referred without recommendation.

Signed by Senator Mulliken.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5431 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Zarelli, Ranking Minority Member; Brandland, Fairley, Hewitt, Kohl-Welles, Parlette, Pflug, Pridemore, Rasmussen, Regala, Rockefeller, Schoesler and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Brian Sims (786-7431)

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, resulting in shellfish bed closure, fish kills, and inability to meet water quality standards.

Summary of Second Substitute Bill: To address environmental and health concerns, local health officers in 12 Puget Sound counties must designate marine recovery areas (MRA) and develop on-site sewage system program implementation plans (local plans). The Department of Health (DOH) will approve or reject local plans. DOH will enter into contracts with counties to ensure that they make progress on local plans. A Department of Ecology (DOE)-administered on-site sewage disposal system (OSS) repair and replacement funding assistance program is established for all counties with marine waters. DOH will report to the Legislature on progress in designating MRA, developing and implementing local plans, and recommendations for professional certification of OSS operation and maintenance personnel.

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

Designation of Marine Recovery Areas. Local health officers will, by July 1, 2006, designate MRA where OSS significantly contribute to public health and environmental concerns, including downgrading of shellfish growing areas, violation of federal clean water standards due to low-dissolved oxygen or fecal coliform, or identification with nitrogen as a contaminant of concern.

In designating MRA, local health officers will assess and include areas where OSS may impact water quality. After July 1, 2006, local health officers may designate additional areas meeting applicable criteria. Where DOH recommends designation or expansion of a designated MRA, the local health officer must notify DOH of its response within 90 days.

Local Plans. In the 12 counties bordering Puget Sound with designated MRA, local health officers must, by July 1, 2007, develop and approve local plans guiding local health jurisdictions in developing and managing all OSS within MRA. DOH may grant a 12-month extension where local health jurisdictions demonstrate substantial progress toward local response plan completion.

Local plans must describe how local health jurisdictions will: (1) by July 1, 2010, find failing OSS and ensure that owners make necessary repairs; (2) by July 1, 2010, find unknown OSS and ensure that they are inspected, properly functioning, and repaired as necessary; (3) implement mandated inspection, reporting, and repair standards and identify additional requirements commensurate with risks posed by OSS; (4) educate OSS owners regarding their obligations and provide them with operation and maintenance information; (5) ensure that OSS owners complete operation and maintenance inspections required by the State Board of Health (SBOH); (6) maintain all SBOH required records, including inspections and repairs; (7) enforce applicable OSS permit requirements; and (8) if necessary, recommend alternatives to conventional OSS such as extending sewer services, developing community sewage

systems, and encouraging OSS technologies with better treatment performance, particularly regarding nitrogen reduction or removal.

Local boards of health must provide a 60-day public comment period, hold a public hearing on proposed local plans, and 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.

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 them. In developing data systems, local health officers must work with other local health jurisdictions with MRA and with DOH and the OSS industry to facilitate information sharing and aggregation, including information regarding failing OSS. Local data systems must be compatible with data systems used throughout the local health jurisdiction.

State Role: Local Response Plan Review, Standards, Technical Assistance, Monitoring and Funding. DOH must review submitted local plans to ensure that all elements have been addressed. The SBOH must adopt rules addressing environmental impacts associated with low-dissolved oxygen in marine waters and may adopt additional criteria for local response plan approval.

Within 30 days of receipt, DOE must approve a plan or specify reasons for not doing so and recommend changes. Local health officers must implement local plans upon receipt of DOE approval or after 30 days without DOE notification. If DOE denies approval, local boards of health may appeal to the SBOH, which will have final resolution.

DOE 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.

DOE will contract with affected counties to implement approved local plans and to develop or enhance data systems. Agreements will include state funding assistance from funds appropriated to DOE for this purpose. Compliance schedules must require that within MRA, local health jurisdictions find failing OSS and work with owners to make needed repairs and show improvement in OSS included in data systems and, of those, show improvement in the percentage that have had required inspections. Contracts must also provide for state assistance in updating local plans. Beginning July 1, 2009, contracts may adopt revised compliance dates where substantial progress has been demonstrated in plan implementation.

Financial assistance program. A program of grants and low-interest and/or deferred-payment loans will be provided from funds appropriated from the public works assistance account. The Department of Community, Trade and Economic Development will administer the financial assistance program in consultation with the Departments of Health and Ecology. Applications will be prioritized based on the level of reductions in environmental and public health problems that will be achieved by the proposed projects. Applicants must agree to comply with inspection and maintenance requirements adopted by the Board of Health. The first five years of the financial assistance program will provide a higher ratio of grants to loans as an incentive for property owners to repair or replace failing systems early.

Inspections. In designated MRA, OSS owners must get an inspection by an OSS professional approved by the county when property is sold or a building permit is required for reconstruction or substantial remodel of the structure served by the OSS. An OSS inspection is not required where an inspection has occurred within the previous year and the report is on file with the local health jurisdiction, the OSS was installed within the previous five years, or the sale is between spouses or resulting from marriage dissolution.

Inspection reports must certify that OSS function properly and document current condition, maintenance needs, any necessary repairs, compliance with SBOH standards, and recommendations for improved maintenance to ensure regulatory compliance. Reports must be provided to OSS owners or operators and local health departments.

Report to Legislature. DOH must report to the Legislature by December 31, 2007, on: progress in designating MRA and developing and implementing local plans; DOH sanitary surveys of shoreline areas; regulatory, statutory, and financial barriers and recommendations for assisting local health jurisdictions to implement local plans; and recommendations for professional certification of OSS operation and maintenance personnel, developed in consultation with local health jurisdictions, the OSS industry, and other affected stakeholders.

Second Substitute Bill Compared to Substitute Bill: The second substitute bill changes the financial assistance program for repairing and replacing failing on-site sewage disposal system.

Substitute Bill Compared to Original Bill: "Marine recovery areas" (MRA) rather than "marine areas of special concern" will be designated; local plans are termed "on-site sewage program implementation plans" rather than "enhanced on-site sewage certification programs." On-site sewage disposal systems (OSS) regulated under a federal water quality discharge permit are excluded. State Board of Health (SBOH) rules addressing environmental impacts associated with low-dissolved oxygen in marine waters must focus on impacts from OSS, and the deadline for additional SBOH rules for designating MRA is deleted. MRA will be designated and local plans developed and approved solely by local health jurisdictions, rather than state agencies. MRA must be designated by July 1, 2006, and local plans developed and approved by July 1, 2007; the Department of Health (DOH) may grant a 12-month extension for the latter deadline if a local health jurisdiction demonstrates substantial progress toward plan completion. Local health jurisdictions must address, in local plans, how they will find failing and unknown OSS and ensure inspection or repair by July 1, 2010 and thereafter; maintain records and enforce permit requirements; and recommend alternatives to conventional OSS that provide better nitrogen removal. If DOH disapproves a plan, the local health jurisdictions must amend and resubmit the plan for approval. DOH disapproval of local plans may be appealed to the SBOH, which will have final resolution. DOH will enter into contracts with counties to implement local plans. The following provisions are deleted: (1) authority for special purpose districts to implement local plans; (2) mandatory system certification requirements for all OSS in MRA and mandatory inspection of OSS in non-MRA areas in Puget Sound; and (3) quality assurance review of local plans by local health jurisdictions. OSS in MRA must be inspected when property is sold or a building permit is required for reconstruction or a substantial remodel; inspections are not required where OSS have been recently inspected or installed, or sales are between spouses or result from marriage dissolution. The DOE-administered financial assistance program is established. DOH must

report to the Legislature on program implementation, suggested changes, and recommendations for professional certification of OSS operation and maintenance personnel inspection of OSS in non-MRA areas in Puget Sound.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Serious pollution and low dissolved oxygen levels caused by failing OSS--resulting in shellfish bed closure, fish kills, and inability to meet water quality standards--must be addressed. Environmental problems in Hood Canal and shellfish protection districts are of particular concern. Regular, documented inspections of OSS and more stringent certification standards are needed to restore water quality. Failing OSS must be identified, homeowners should be better informed about the problem, and DOE, DOH and local governments must have expanded authority to develop solutions. This legislation limits costs to local governments by providing for OSS inspections by private-sector inspectors. The substitute is less costly than the original bill.

Testimony Against: If current laws were enforced, most of this bill would not be necessary. Terminology is not well defined and is not commonly used in the OSS industry. There will be no consistency in applying standards at the local level. OSS "failure" under this bill is not broad enough to include many OSS with significant problems. DOE and DOH (a public health agency, not an environmental agency) are given too much regulatory authority. Local governments and homeowners will face additional costs. New OSS must already comply with stringent standards. Failing OSS are difficult to discover and can be very expensive to repair. Even properly-operating OSS can cause significant environmental concerns; legislation should instead attempt to encourage new technology.

Who Testified: PRO: Senator Spanel, prime sponsor; Bruce Wishart, People for Puget Sound; Josh Baldi, Washington Environmental Council; Ric Abbett, Trout Unlimited; Terry Hull, Puget Sound Action Team; Geoff Menzies (by recorded message) and Bill Dewey, Pacific Coast Shellfish Growers Association.

OTHER: Grant Nelson, Association of Washington Business; Ezra Eikmeyer, Five Star Environmental Solutions; Larry Fay, Public Health-Seattle & King County.

CON: Duke Schaub, Association of General Contractors; J.R. Inman and Dan Villwock, Association of General Contractors and Washington On-Site Sewage Association.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Tom Eaton, US Environmental Protection Agency. OTHER: Melodie Selby, Department of Ecology; Janice Adair, Department of Health; Art Starry, Thurston County Environmental Health Division.