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**SUBSTITUTE HOUSE BILL 1458**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives Hunt, Dickerson, McCoy, B. Sullivan, Williams, Haigh, Appleton, Linville, Chase, Dunshee, Simpson, Upthegrove, Moeller and McDermott)

READ FIRST TIME 03/01/05.

1       AN ACT Relating to managing on-site sewage disposal systems in  
2 marine areas; amending RCW 43.20.050 and 90.71.100; adding a new  
3 chapter to Title 70 RCW; and creating a new section.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** The legislature finds that a significant  
6 portion of the state's residents live in homes served by on-site sewage  
7 disposal systems, and that many new residences will be served by these  
8 systems. The legislature recognizes that properly functioning on-site  
9 sewage disposal systems provide for the protection of water quality,  
10 and that many other factors are contributing to water quality  
11 degradation in marine waters. The legislature further finds that  
12 improperly functioning on-site sewage disposal systems in marine areas  
13 of special concern may contaminate water, resulting in significant  
14 public health and environmental problems. The legislature further  
15 finds that local programs designed to identify and correct failing on-  
16 site sewage disposal systems have proven effective in reducing and  
17 eliminating public health and environmental hazards, improving water  
18 quality, and reopening previously closed shellfish areas. The  
19 legislature further finds that a partnership is necessary among the

1 state, local, and private sector to develop successful local programs  
2 with adequate funding and the tools to identify and repair failing on-  
3 site sewage disposal systems. Therefore, the legislature finds that  
4 local programs must be established in marine areas of special concern  
5 to inventory existing on-site sewage disposal systems, identify and  
6 repair failing systems, develop data bases capable of sharing  
7 information regarding on-site sewage disposal systems, and monitor  
8 results to demonstrate programs are working and public health and the  
9 environment are protected.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply  
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Board" means the state board of health.

13 (2) "Department" means the department of health.

14 (3) "Failure" means a condition of an on-site sewage disposal  
15 system or component that threatens the public health or environment by  
16 inadequately treating sewage or by creating a potential for direct or  
17 indirect contact between sewage and the public. Examples of failure  
18 include:

19 (a) Sewage on the surface of the ground;

20 (b) Sewage backing up into a structure;

21 (c) Sewage leaking from a sewage tank or collection system;

22 (d) Cesspools or seepage pits;

23 (e) Inadequately treated effluent contaminating ground water or  
24 surface water; or

25 (f) Noncompliance with a standard stipulated on a permit issued by  
26 the department or local health department.

27 (4) "Marine area of special concern" means an area of definite  
28 boundaries where the local health officer, or the department in  
29 consultation with the health officer, determines additional  
30 requirements for on-site sewage disposal systems may be necessary to  
31 reduce potential failures or minimize negative impacts of on-site  
32 sewage disposal systems on public health or the environment.

33 (5) "On-site sewage disposal system" means any system of piping,  
34 treatment devices, or other facilities that convey, store, treat, or  
35 dispose of sewage on the property where it originates or on nearby  
36 property under the control of the user where the system is not

1 connected to a public sewer system. For purposes of this chapter, an  
2 on-site sewage disposal system does not include indoor plumbing and  
3 associated fixtures.

4 (6) "Unknown system" means an on-site sewage disposal system that  
5 was installed without the knowledge or approval of the local health  
6 jurisdiction, including those that were installed before the approval  
7 was required.

8 NEW SECTION. **Sec. 3.** (1) By July 1, 2007, and thereafter, the  
9 local health officers of health jurisdictions in the twelve counties  
10 bordering Puget Sound where a marine area of special concern has been  
11 designated under subsection (5) of this section shall each develop and  
12 approve an on-site sewage disposal system program implementation plan  
13 that will guide the local health jurisdiction in the development and  
14 management of all on-site sewage disposal systems within the marine  
15 areas of special concern within its jurisdiction.

16 (2) For purposes of this chapter, the local health jurisdictions in  
17 counties bordering Puget Sound are Clallam, Island, Kitsap, Jefferson,  
18 Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce,  
19 Thurston, and Whatcom.

20 (3) The on-site sewage disposal system program implementation plan  
21 for the marine area of special concern must include how the local  
22 health jurisdiction will:

23 (a) By July 1, 2010, and thereafter, unless an extension is granted  
24 by the department under section 5 of this act, find failing systems and  
25 ensure system owners make necessary repairs;

26 (b) By July 1, 2010, and thereafter, unless an extension is granted  
27 by the department under section 5 of this act, find unknown systems and  
28 ensure they are inspected and repaired;

29 (c) Identify the additional requirements for operation,  
30 maintenance, and monitoring that are commensurate with the risks posed  
31 by on-site sewage disposal systems in the marine area of special  
32 concern;

33 (d) Facilitate education of owners of on-site sewage disposal  
34 systems regarding requirements for owners;

35 (e) Provide operation and maintenance information for owners of all  
36 system types in use within the marine area of special concern;

1 (f) Ensure owners of on-site sewage disposal systems complete  
2 operation and maintenance inspections as required by rules adopted by  
3 the board;

4 (g) Maintain all records as required by rules adopted by the board  
5 including inspections and repairs;

6 (h) Enforce on-site sewage disposal system permit requirements; and

7 (i) If necessary, recommend alternatives to on-site sewage disposal  
8 systems including extending sewer services or develop community sewage  
9 systems.

10 (4) In addition to the on-site sewage disposal system program  
11 implementation plan, the local health officer shall:

12 (a) Require that on-site sewage disposal system maintenance  
13 specialists, septic tank pumpers, or others performing on-site sewage  
14 disposal system inspections submit reports or inspection results to the  
15 local health jurisdiction of any failing on-site sewage disposal  
16 system; and

17 (b) Progressively develop or enhance and maintain an electronic  
18 data system of all on-site sewage disposal systems within their  
19 jurisdiction to enable the local health jurisdiction to actively manage  
20 those systems. In developing the electronic data system, the  
21 department shall work with the local health jurisdictions and the on-  
22 site sewage disposal system industry to develop common forms and  
23 systems to facilitate information sharing, including the reporting of  
24 failing on-site sewage disposal systems in a marine area of special  
25 concern. The department shall develop and maintain a centralized  
26 electronic data system containing on-site sewage disposal system  
27 information collected by local health jurisdictions.

28 (5) By July 1, 2006, and thereafter, the local health officers  
29 shall at a minimum designate the following areas as a marine area of  
30 special concern in areas where concentrations of on-site sewage  
31 disposal systems are a significant factor contributing to public health  
32 and environmental concerns and:

33 (a) Shellfish growing areas have been downgraded or listed as  
34 threatened by the department under chapter 69.30 RCW;

35 (b) State waters are listed by the department of ecology under  
36 Section 303(d) of the federal clean water act (33 U.S.C. Sec. 1251 et  
37 seq.) for low-dissolved oxygen or fecal coliform;

1 (c) Marine waters have been identified by the local health officer  
2 with nitrogen as a contaminant of concern; or

3 (d) Marine waters are experiencing low-dissolved oxygen levels  
4 below three parts per million.

5 (6) In determining the boundaries for the marine area of special  
6 concern, the local health officer shall assess and include geographical  
7 areas where on-site sewage disposal systems may result in an impact to  
8 the marine area of special concern identified in subsection (5) of this  
9 section.

10 (7) The local board of health shall provide at least a thirty-day  
11 public comment period and hold a public hearing on the proposed on-site  
12 sewage disposal system program implementation plan. The local board of  
13 health shall approve the implementation plan after consideration of the  
14 public comments on the plan.

15 (8) Within ten days of adoption by the local board of health, the  
16 local health officer shall submit a copy of the implementation plan to  
17 the department for review and approval as provided in section 4 of this  
18 act.

19 NEW SECTION. **Sec. 4.** (1) The department shall review an on-site  
20 sewage disposal system program implementation plan submitted by the  
21 local health officer to ensure all the elements of the plan, including  
22 designation of any marine area of special concern, have been addressed.  
23 The board may adopt additional criteria for plan approval by rule.

24 (2) Within thirty days of receiving the plan, the department shall  
25 either approve the plan or provide in writing the reasons for not  
26 approving the plan and recommend changes. The department shall provide  
27 public notice before approving or not approving an on-site sewage  
28 disposal system program implementation plan. If the department does  
29 not approve the plan, the local board of health must amend and resubmit  
30 the plan to the department for approval.

31 (3) Upon receipt of department approval or after thirty days  
32 without notification, whichever comes first, the local health officer  
33 shall implement the plan.

34 (4) If the department denies approval of the plan, the local board  
35 of health may:

36 (a) Resubmit a revised plan for department review and approval; or

1 (b) Submit a written request for a review of the department denial  
2 within sixty days from the date the local board of health receives the  
3 written reasons for denial.

4 (5) Upon receipt of a written request for review of the department  
5 denial, the department shall:

6 (a) Acknowledge the receipt of the request in writing; and

7 (b) Within thirty days of receipt of the request for review, form  
8 a mutually acceptable advisory panel consisting of:

9 (i) One department employee;

10 (ii) One employee from a local health jurisdiction other than that  
11 which requested the review; and

12 (iii) One member of the department's technical advisory committee.

13 (6) Within thirty days, the advisory panel shall issue either an  
14 approval of the plan or uphold the department's denial. If the  
15 advisory panel upholds the department's denial, the local board of  
16 health may appeal the denial to the board, which will have final  
17 resolution of the matter.

18 (7) The department shall provide assistance to local health  
19 jurisdictions on:

20 (a) Developing on-site sewage disposal system program  
21 implementation plans required by section 3 of this act;

22 (b) Identifying reasonable methods for finding unknown on-site  
23 sewage disposal systems; and

24 (c) Progressively developing or enhancing electronic data systems  
25 that will enable each local health jurisdiction to actively manage all  
26 on-site sewage disposal systems within their jurisdictions, with the  
27 priority given to those on-site sewage disposal systems that are  
28 located or could affect the designated marine areas of special concern.

29 NEW SECTION. **Sec. 5.** (1) The department shall enter into a  
30 contract with each of the counties subject to this chapter to implement  
31 the approved on-site sewage disposal system program implementation plan  
32 developed under this chapter, and to develop or enhance the data  
33 management system required by this chapter with funds appropriated to  
34 the department for those purposes.

35 (2) The contract shall require, at a minimum, that within the  
36 marine area of special concern, the local health jurisdiction:

37 (a) Show progressive improvement in finding failing systems;

1 (b) Show progressive improvement in working with on-site sewage  
2 disposal system owners to make needed system repairs;

3 (c) Is actively undertaking steps to find previously unknown on-  
4 site sewage disposal systems and ensure they are inspected as required  
5 and repaired if necessary;

6 (d) Show progressive improvement in the percentage of on-site  
7 sewage disposal systems that are included in an electronic data system;  
8 and

9 (e) Of those on-site sewage disposal systems in the electronic data  
10 system, show progressive improvement in the percentage that have had  
11 required inspections.

12 (3) The contract must also include provisions for updating the on-  
13 site sewage disposal system program implementation plan.

14 (4) If a local health jurisdiction has demonstrated good faith  
15 efforts in attempting to meet the requirements in section 3(3) (a) and  
16 (b) of this act, but is unable to accomplish those objectives within  
17 the time frames established, the department may grant an extension to  
18 those requirements.

19 **Sec. 6.** RCW 43.20.050 and 1993 c 492 s 489 are each amended to  
20 read as follows:

21 (1) The state board of health shall provide a forum for the  
22 development of public health policy in Washington state. It is  
23 authorized to recommend to the secretary means for obtaining  
24 appropriate citizen and professional involvement in all public health  
25 policy formulation and other matters related to the powers and duties  
26 of the department. It is further empowered to hold hearings and  
27 explore ways to improve the health status of the citizenry.

28 (a) At least every five years, the state board shall convene  
29 regional forums to gather citizen input on public health issues.

30 (b) Every two years, in coordination with the development of the  
31 state biennial budget, the state board shall prepare the state public  
32 health report that outlines the health priorities of the ensuing  
33 biennium. The report shall:

- 34 (i) Consider the citizen input gathered at the forums;
- 35 (ii) Be developed with the assistance of local health departments;
- 36 (iii) Be based on the best available information collected and

1 reviewed according to RCW 43.70.050 (~~and recommendations from the~~  
2 ~~council~~);

3 (iv) Be developed with the input of state health care agencies. At  
4 least the following directors of state agencies shall provide timely  
5 recommendations to the state board on suggested health priorities for  
6 the ensuing biennium: The secretary of social and health services, the  
7 health care authority administrator, the insurance commissioner, the  
8 superintendent of public instruction, the director of labor and  
9 industries, the director of ecology, and the director of agriculture;

10 (v) Be used by state health care agency administrators in preparing  
11 proposed agency budgets and executive request legislation;

12 (vi) Be submitted by the state board to the governor by January 1st  
13 of each even-numbered year for adoption by the governor. The governor,  
14 no later than March 1st of that year, shall approve, modify, or  
15 disapprove the state public health report.

16 (c) In fulfilling its responsibilities under this subsection, the  
17 state board may create ad hoc committees or other such committees of  
18 limited duration as necessary.

19 (2) In order to protect public health, the state board of health  
20 shall:

21 (a) Adopt rules necessary to assure safe and reliable public  
22 drinking water and to protect the public health. Such rules shall  
23 establish requirements regarding:

24 (i) The design and construction of public water system facilities,  
25 including proper sizing of pipes and storage for the number and type of  
26 customers;

27 (ii) Drinking water quality standards, monitoring requirements, and  
28 laboratory certification requirements;

29 (iii) Public water system management and reporting requirements;

30 (iv) Public water system planning and emergency response  
31 requirements;

32 (v) Public water system operation and maintenance requirements;

33 (vi) Water quality, reliability, and management of existing but  
34 inadequate public water systems; and

35 (vii) Quality standards for the source or supply, or both source  
36 and supply, of water for bottled water plants.

37 (b) Adopt rules and standards for prevention, control, and  
38 abatement of health hazards and nuisances related to the disposal of

1 wastes, solid and liquid, including but not limited to sewage, garbage,  
2 refuse, and other environmental contaminants; adopt standards and  
3 procedures governing the design, construction, and operation of sewage,  
4 garbage, refuse and other solid waste collection, treatment, and  
5 disposal facilities;

6 (c) Adopt rules controlling public health related to environmental  
7 conditions including but not limited to heating, lighting, ventilation,  
8 sanitary facilities, cleanliness and space in all types of public  
9 facilities including but not limited to food service establishments,  
10 schools, institutions, recreational facilities and transient  
11 accommodations and in places of work;

12 (d) Adopt rules for the imposition and use of isolation and  
13 quarantine;

14 (e) Adopt rules for the prevention and control of infectious and  
15 noninfectious diseases, including food and vector borne illness, and  
16 rules governing the receipt and conveyance of remains of deceased  
17 persons, and such other sanitary matters as admit of and may best be  
18 controlled by universal rule; and

19 (f) Adopt rules for accessing existing data bases for the purposes  
20 of performing health related research.

21 (3) The state board may delegate any of its rule-adopting authority  
22 to the secretary and rescind such delegated authority.

23 (4) All local boards of health, health authorities and officials,  
24 officers of state institutions, police officers, sheriffs, constables,  
25 and all other officers and employees of the state, or any county, city,  
26 or township thereof, shall enforce all rules adopted by the state board  
27 of health. In the event of failure or refusal on the part of any  
28 member of such boards or any other official or person mentioned in this  
29 section to so act, he or she shall be subject to a fine of not less  
30 than fifty dollars, upon first conviction, and not less than one  
31 hundred dollars upon second conviction.

32 (5) The state board may advise the secretary on health policy  
33 issues pertaining to the department of health and the state.

34 (6) In addition to the powers and duties to adopt rules for on-site  
35 sewage disposal systems as provided in subsection (2) of this section,  
36 the state board of health shall adopt rules to address environmental  
37 impacts associated with low-dissolved oxygen in marine waters.

1       **Sec. 7.** RCW 90.71.100 and 2001 c 273 s 3 are each amended to read  
2 as follows:

3       (1) The action team shall establish ~~((a shellfish -))~~ an on-site  
4 sewage grant program ~~((in))~~ for:

5       (a) Puget Sound;

6       (b) Mason, Jefferson, and Kitsap counties; and ~~((for))~~

7       (c) Pacific and Grays Harbor counties.

8       (2) The action team shall provide funds to local health  
9 jurisdictions to be used as grants to individuals for improving their  
10 on-site sewage systems. The grants may be provided only in areas:

11       (a) That have the potential to adversely affect water quality in  
12 commercial and recreational shellfish growing areas; and

13       (b) Within the watersheds that drain to Hood Canal south of a line  
14 projected from Tala Point in Jefferson county to Foulweather Bluff in  
15 Kitsap county.

16       (3) A recipient of a grant shall enter into an agreement with the  
17 appropriate local health jurisdiction to maintain the improved on-site  
18 sewage system according to specifications required by the local health  
19 jurisdiction.

20       (4)(a) For grants provided in Puget Sound and Pacific and Grays  
21 Harbor counties, the action team shall work closely with local health  
22 jurisdictions and shall endeavor to attain geographic equity between  
23 Willapa Bay and the Puget Sound when making funds available under this  
24 program. For the purposes of this subsection, "geographic equity"  
25 means issuing on-site sewage grants at a level that matches the funds  
26 generated from the oyster reserve lands in that area.

27       ~~((+2))~~ (b) The action team may use funds appropriated by the  
28 legislature for grants provided in Jefferson, Kitsap, and Mason  
29 counties. The action team also may provide grants under this section  
30 with any federal funds received for this program and any funds  
31 generated from oyster reserve lands in these three counties.

32       (5) In the Puget Sound, the action team shall give first priority  
33 to areas that are:

34       (a) Identified as "areas of special concern" under WAC 246-272-  
35 01001; or

36       (b) Included within a shellfish protection district under chapter  
37 90.72 RCW.

1        ~~((3))~~ (6) In Grays Harbor and Pacific counties, the action team  
2 shall give first priority to preventing the deterioration of water  
3 quality in areas where commercial or recreational shellfish are grown.

4        ~~((4))~~ (7) The action team and each participating local health  
5 jurisdiction shall enter into a memorandum of understanding that will  
6 establish an applicant income eligibility requirement for individual  
7 grant applicants from within the jurisdiction and other mutually  
8 agreeable terms and conditions of the grant program.

9        ~~((5))~~ (8) The action team may recover the costs to administer  
10 this program not to exceed ten percent of the shellfish - on-site  
11 sewage grant program.

12        ~~((6) For the 2001-2003 biennium, the action team may use up to  
13 fifty percent of the shellfish on-site sewage grant program funds for  
14 grants to local health jurisdictions to establish areas of special  
15 concern under WAC 246-272-01001, or for operation and maintenance  
16 programs therein, where commercial and recreational uses are present.))~~

17        NEW SECTION. **Sec. 8.** The department of health shall work with  
18 local health jurisdictions, the on-site sewage disposal system  
19 industry, and other affected stakeholders to develop recommendations  
20 for the professional certification of on-site sewage disposal system  
21 operation and maintenance personnel. The department must develop and  
22 submit recommendations to the appropriate committees of the legislature  
23 by December 31, 2005.

24        NEW SECTION. **Sec. 9.** Sections 1 through 5 of this act constitute  
25 a new chapter in Title 70 RCW.

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