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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1458

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State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 03/07/05.

1 AN ACT Relating to managing on-site sewage disposal systems in  
2 marine areas; amending RCW 43.20.050; adding a new section to chapter  
3 43.155 RCW; adding a new chapter to Title 70 RCW; creating new  
4 sections; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Hood Canal and other marine waters in Puget Sound are at risk  
8 of severe loss of marine life from low-dissolved oxygen, and that in  
9 addition to such natural factors as poor overall water circulation and  
10 stratification of water that discourages mixing of surface-to-deeper  
11 waters, the increased input of human-influenced nutrients, especially  
12 nitrogen, are a significant factor in this low-oxygen condition in some  
13 of Puget Sound's waters;

14 (2) A significant portion of the state's residents live in homes  
15 served by on-site sewage disposal systems, and that many new residences  
16 will be served by these systems;

17 (3) Properly functioning on-site sewage disposal systems largely  
18 provide for the protection of water quality and improperly functioning

1 on-site sewage disposal systems in marine recovery areas may  
2 contaminate surface water, resulting in significant public health and  
3 environmental problems;

4 (4) Local programs designed to identify and correct failing on-site  
5 sewage disposal systems have proven effective in reducing and  
6 eliminating public health and environmental hazards, improving water  
7 quality, and reopening previously closed shellfish areas; and

8 (5) State water quality monitoring data and analysis can provide a  
9 means to focus these enhanced local programs on the specific geographic  
10 areas that are sources of pollutants that are degrading Puget Sound  
11 waters.

12 Therefore, it is the purpose of this chapter to authorize enhanced  
13 local programs in marine recovery areas to inventory existing on-site  
14 sewage disposal systems, to identify the location of all on-site sewage  
15 disposal systems near marine recovery areas, to require inspection of  
16 on-site sewage disposal systems and repairs to those systems that are  
17 failing, to develop data bases capable of sharing information regarding  
18 on-site sewage disposal systems, and to monitor the progress of  
19 implementing these programs to ensure that they are working to protect  
20 public health and the quality of Puget Sound waters.

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

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

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

25 (3) "Failure" means a condition of an on-site sewage disposal  
26 system or component that threatens the public health or environment by  
27 inadequately treating sewage or that results in creating a potential  
28 for direct or indirect contact between sewage and the public. Examples  
29 of failure include:

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

31 (b) Sewage backing up into a structure;

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

33 (d) Cesspools or seepage pits;

34 (e) Inadequately treated effluent contaminating ground water or  
35 surface water; or

36 (f) Noncompliance with a requirement stipulated on a permit issued  
37 by the department or local health department.

1 (4) "Implementation plan" means the on-site sewage disposal system  
2 implementation plan of a local health jurisdiction required under  
3 section 4 of this act.

4 (5) "Local health officer" or "local health jurisdiction" means the  
5 local health officers and local health jurisdictions in counties  
6 bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San  
7 Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and  
8 Whatcom.

9 (6) "Marine recovery area" means an area of definite boundaries  
10 where the local health officer, or the department in consultation with  
11 the health officer, determines additional requirements for on-site  
12 sewage disposal systems may be necessary to reduce potential failures  
13 or minimize negative impacts of on-site sewage disposal systems on  
14 public health or the environment.

15 (7) "On-site sewage disposal system" means any system of piping,  
16 treatment devices, or other facilities that convey, store, treat, or  
17 dispose of sewage on the property where it originates or on nearby  
18 property under the control of the user where the system is not  
19 connected to a public sewer system. For purposes of this chapter, an  
20 on-site sewage disposal system does not include indoor plumbing and  
21 associated fixtures and does not include any system regulated by a  
22 water quality discharge permit issued under chapter 90.48 RCW.

23 (8) "Unknown system" means an on-site sewage disposal system that  
24 was installed without the knowledge or approval of the local health  
25 jurisdiction, including those that were installed before the approval  
26 was required.

27 NEW SECTION. **Sec. 3.** (1) By July 1, 2006, the local health  
28 officer, or the department in consultation with the local health  
29 officer, shall propose a marine recovery area for those land areas  
30 where on-site sewage disposal systems are a significant factor  
31 contributing to public health and environmental concerns, and where  
32 associated with:

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

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

1 (2) In determining the boundaries for the marine recovery area, the  
2 local health officer shall assess and include those land areas where  
3 on-site sewage disposal systems may result in an impact to the water  
4 quality in the marine recovery area.

5 (3) After July 1, 2006, the local health officer may designate  
6 additional areas where new information indicates additional land areas  
7 meet the criteria of this section. Where the department recommends the  
8 designation of an area or the expansion of a designated area, the local  
9 health officer shall notify the department of its decision concerning  
10 the recommendation within ninety days of receipt of the recommendation.

11 NEW SECTION. **Sec. 4.** (1) By July 1, 2007, and thereafter, the  
12 local health officers of health jurisdictions in the twelve counties  
13 bordering Puget Sound where a marine recovery area has been proposed by  
14 the local health officer or the department under section 3 of this act  
15 shall each develop and approve an on-site sewage disposal system  
16 program implementation plan that includes the designation of marine  
17 recovery areas that will guide the local health jurisdiction in the  
18 development and management of all on-site sewage disposal systems  
19 within the marine recovery areas within its jurisdiction. The  
20 department may grant an extension of twelve months where the local  
21 health jurisdiction has demonstrated substantial progress toward  
22 completion of the plan.

23 (2) The on-site sewage disposal system program implementation plan  
24 for the marine recovery area must include how the local health  
25 jurisdiction will:

26 (a) By July 1, 2010, find failing systems and ensure system owners  
27 make necessary repairs;

28 (b) By July 1, 2010, find unknown systems and ensure they are  
29 inspected and ensure they are functioning properly, or repairs are made  
30 as necessary;

31 (c) Identify the additional minimum requirements for operation,  
32 maintenance, and monitoring that will mitigate the risks posed by on-  
33 site sewage disposal systems in the marine recovery area;

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

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

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 applicable on-site sewage disposal system permit  
7 requirements; and

8 (i) If necessary, recommend alternatives to conventional on-site  
9 sewage disposal systems such as extending sewer services, developing  
10 community sewage systems, and encouraging on-site sewage disposal  
11 system technologies that present greater treatment performance,  
12 particularly regarding the reduction or removal of nitrogen.

13 (3) The local board of health shall provide at least a sixty-day  
14 public comment period and hold a public hearing on the proposed on-site  
15 sewage disposal system program implementation plan. The local health  
16 officer shall submit the draft plan to the department for review and  
17 comment. The local board of health shall approve the implementation  
18 plan after consideration of the public comments on the plan.

19 (4) Within ten days of adoption by the local board of health, the  
20 local health officer shall submit a copy of the implementation plan to  
21 the department for review and approval as provided in section 6 of this  
22 act.

23 NEW SECTION. **Sec. 5.** Each local health officer shall develop and  
24 maintain an electronic data system of all on-site sewage disposal  
25 systems within marine recovery areas to enable local health  
26 jurisdictions to actively manage on-site sewage disposal systems. In  
27 developing electronic data systems, the department shall work with  
28 local health jurisdictions with marine recovery areas and the on-site  
29 sewage disposal system industry to develop common forms and protocols  
30 to facilitate sharing and aggregation of information, including the  
31 reporting of failing on-site sewage disposal systems in marine recovery  
32 areas. The local data system should be compatible with the data system  
33 used throughout the local health jurisdiction.

34 NEW SECTION. **Sec. 6.** (1) The department shall review an on-site  
35 sewage disposal system program implementation plan submitted by the

1 local health officer to ensure all the elements of the plan, including  
2 designation of any marine recovery area, have been addressed. The  
3 board may adopt additional criteria for plan approval by rule.

4 (2) Within thirty days of receiving the plan, the department shall  
5 either approve the plan or provide in writing the reasons for not  
6 approving the plan and recommend changes. If the department does not  
7 approve the plan, the local board of health must amend and resubmit the  
8 plan to the department for approval.

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

12 (4) If the department denies approval of the plan, the local board  
13 of health may appeal the denial to the state board of health, which  
14 will have final resolution of the matter.

15 (5) The department shall provide assistance to local health  
16 jurisdictions on:

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

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

21 (c) Developing or enhancing electronic data systems that will  
22 enable each local health jurisdiction to actively manage all on-site  
23 sewage disposal systems within their jurisdictions, with the priority  
24 given to those on-site sewage disposal systems that are located or  
25 could affect the designated marine recovery areas.

26 NEW SECTION. **Sec. 7.** (1) The department shall enter into a  
27 contract with each of the counties subject to this chapter to implement  
28 the approved on-site sewage disposal system program implementation plan  
29 developed under this chapter, and to develop or enhance the data  
30 management system required by this chapter. The contract shall include  
31 state funding assistance to the local health jurisdiction from funds  
32 appropriated to the department for this purpose.

33 (2) The contract shall require, at a minimum, that within the  
34 marine recovery area, the local health jurisdiction:

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

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

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

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

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

10 (3) The contract must also include provisions for state assistance  
11 in updating the implementation plan. Beginning July 1, 2009, the  
12 contract may adopt revised compliance dates, including those in section  
13 4 of this act, where substantial progress has been demonstrated in plan  
14 implementation.

15 NEW SECTION. **Sec. 8.** The provisions of this chapter are  
16 supplemental to all other authorities governing on-site sewage disposal  
17 systems, including chapter 70.118 RCW and rules adopted under that  
18 chapter.

19 NEW SECTION. **Sec. 9.** (1) The department of health shall report  
20 electronically to the appropriate committees of the legislature by  
21 December 31, 2007, on progress in designating marine recovery areas and  
22 developing and implementing on-site sewage disposal system  
23 implementation plans for such areas.

24 (2) The report shall include information on:

25 (a) The status of plans in each county covered by sections 1  
26 through 8 of this act;

27 (b) The status of system location, identification, and inclusion  
28 within the electronic data base in each county, including estimates of  
29 the remaining systems within marine recovery areas that have not been  
30 identified or included within the data base;

31 (c) The shoreline areas for which sanitary surveys have been  
32 completed by the department;

33 (d) The progress of and capacity of local health jurisdictions to  
34 identify on-site sewage disposal systems within such areas and to  
35 ensure that failing systems are repaired and all systems are operated  
36 and maintained in compliance with board of health standards;

1 (e) Regulatory, statutory, and financial barriers to implementing  
2 the plan;

3 (f) Recommendations that will assist local health jurisdictions to  
4 successfully implement plans; and

5 (g) Recommendations for the professional certification of on-site  
6 sewage disposal system operation and maintenance personnel, developed  
7 in consultation with local health jurisdictions, the on-site sewage  
8 disposal system industry, and other affected stakeholders.

9 (3) Local health jurisdictions shall provide information and data  
10 requested by the department of health in developing the reports, and  
11 the department shall append all reports or information that the local  
12 health jurisdictions request to be included in the report.

13 **Sec. 10.** RCW 43.20.050 and 1993 c 492 s 489 are each amended to  
14 read as follows:

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

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

24 (b) Every two years, in coordination with the development of the  
25 state biennial budget, the state board shall prepare the state public  
26 health report that outlines the health priorities of the ensuing  
27 biennium. The report shall:

- 28 (i) Consider the citizen input gathered at the forums;
- 29 (ii) Be developed with the assistance of local health departments;
- 30 (iii) Be based on the best available information collected and  
31 reviewed according to RCW 43.70.050 (~~and recommendations from the~~  
32 ~~council~~));

33 (iv) Be developed with the input of state health care agencies. At  
34 least the following directors of state agencies shall provide timely  
35 recommendations to the state board on suggested health priorities for  
36 the ensuing biennium: The secretary of social and health services, the



1 health care authority administrator, the insurance commissioner, the  
2 superintendent of public instruction, the director of labor and  
3 industries, the director of ecology, and the director of agriculture;

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

6 (vi) Be submitted by the state board to the governor by January 1<sup>st</sup>  
7 of each even-numbered year for adoption by the governor. The governor,  
8 no later than March 1<sup>st</sup> of that year, shall approve, modify, or  
9 disapprove the state public health report.

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

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

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

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

21 (ii) Drinking water quality standards, monitoring requirements, and  
22 laboratory certification requirements;

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

24 (iv) Public water system planning and emergency response  
25 requirements;

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

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

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

31 (b) Adopt rules and standards for prevention, control, and  
32 abatement of health hazards and nuisances related to the disposal of  
33 wastes, solid and liquid, including but not limited to sewage, garbage,  
34 refuse, and other environmental contaminants; adopt standards and  
35 procedures governing the design, construction, and operation of sewage,  
36 garbage, refuse and other solid waste collection, treatment, and  
37 disposal facilities;

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

7 (d) Adopt rules for the imposition and use of isolation and  
8 quarantine;

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

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

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

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

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

29 (6) In addition to the powers and duties to adopt rules for on-site  
30 sewage disposal systems as provided in subsection (2) of this section,  
31 the state board of health shall adopt rules to address environmental  
32 impacts associated with low-dissolved oxygen in marine waters caused  
33 wholly or in part by on-site sewage disposal systems, as defined in  
34 section 2 of this act.

35 NEW SECTION. Sec. 11. A new section is added to chapter 43.155  
36 RCW to read as follows:

37 (1) From funds specifically appropriated in the biennial

1 appropriations act for the purposes of this section, the department  
2 shall administer a program of financial assistance for the repair and  
3 replacement of on-site sewage disposal systems in counties with marine  
4 waters. For purposes of this section, on-site sewage disposal system  
5 has the same meaning as defined in section 2 of this act.

6 (2) The department shall design an application process for this  
7 financial assistance in coordination with the Puget Sound action team  
8 and the departments of health and ecology. The department may contract  
9 with private financial institutions to administer the banking functions  
10 involved in this financial assistance program. The application process  
11 must ensure that:

12 (a) Applications are readily accessible at the local level through  
13 local health districts and departments, and that the application  
14 process is easy to understand and complete by homeowners with technical  
15 assistance provided by local health districts and departments.

16 (b) Applications are prioritized based on the level of reductions  
17 in environmental and public health problems that will be achieved by  
18 the proposed on-site sewage disposal system repair or replacement.

19 (c) Applicants will provide proper inspection and maintenance of  
20 the system repaired or installed to standards required by the local  
21 health jurisdiction and applicable standards under rules adopted by the  
22 state board of health.

23 (3) In consultation with the departments of health and ecology, the  
24 department shall design the financial assistance program to provide a  
25 combination of grants and low-interest and/or deferred-payment loans.  
26 The program shall provide grants based on financial need of the  
27 applicant. The portion of financial assistance provided through grants  
28 shall be larger in the first five years of the program to encourage  
29 homeowners with failing on-site sewage disposal systems to repair and  
30 replace those systems as early as possible.

31 NEW SECTION. **Sec. 12.** Sections 1 through 8 of this act constitute  
32 a new chapter in Title 70 RCW.

33 NEW SECTION. **Sec. 13.** If specific funding for the purposes of  
34 this act, referencing this act by bill or chapter number, is not  
35 provided by June 30, 2005, in the omnibus appropriations act, this act  
36 is null and void.

1        NEW SECTION.   **Sec. 14.**   This act is necessary for the immediate  
2   preservation of the public peace, health, or safety, or support of the  
3   state government and its existing public institutions, and takes effect  
4   July 1, 2005.

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