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**SUBSTITUTE SENATE BILL 5431**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Water, Energy & Environment (originally sponsored by Senators Spanel, Rockefeller, Pridemore, Poulsen, Kohl-Welles, Doumit, Regala, Fraser, Kline and McCaslin)

READ FIRST TIME 03/02/05.

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 90.50A RCW; adding a new chapter to Title 70 RCW; creating a new  
4 section; 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 standard stipulated on a permit issued by  
37 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 shall designate a marine recovery area for those land areas  
29 where on-site sewage disposal systems are a significant factor  
30 contributing to public health and environmental concerns, and where  
31 associated with:

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

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

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

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

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

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

31 (c) Implement the requirements for inspection, reporting, and  
32 completing necessary repairs required under section 8 of this act;

33 (d) Identify the additional requirements for operation,  
34 maintenance, and monitoring that are commensurate with the risks posed  
35 by on-site sewage disposal systems in the marine recovery area;

36 (e) Facilitate education of owners of on-site sewage disposal  
37 systems regarding requirements for owners;

1 (f) Provide operation and maintenance information for owners of all  
2 system types in use within the marine recovery area;

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

6 (h) Maintain all records as required by rules adopted by the board  
7 including inspections and repairs;

8 (i) Enforce applicable on-site sewage disposal system permit  
9 requirements; and

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

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

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

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

1        NEW SECTION.    **Sec. 6.**    (1) The department shall review an on-site  
2 sewage disposal system program implementation plan submitted by the  
3 local health officer to ensure all the elements of the plan, including  
4 designation of any marine recovery area, have been addressed.    The  
5 board may adopt additional criteria for plan approval by rule.

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

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

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

17        (5) The department shall provide assistance to local health  
18 jurisdictions on:

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

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

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

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

35        (2) The compliance schedule shall require, at a minimum, that  
36 within the marine recovery area, 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 taking steps to find previously unknown on-site  
4 sewage disposal systems and ensure they are inspected as required and  
5 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 state assistance  
13 in updating the implementation plan. Beginning July 1, 2009, the  
14 contract may adopt revised compliance dates, including those in section  
15 4 of this act, where substantial progress has been demonstrated in plan  
16 implementation.

17 NEW SECTION. **Sec. 8.** (1) Except as provided in subsection (4) of  
18 this section, in designated marine recovery areas, the owner of an on-  
19 site sewage disposal system shall obtain an inspection of the system by  
20 an on-site sewage disposal system professional approved by the county  
21 when:

22 (a) The property is sold to another person; or

23 (b) A building permit is required for the structure served by the  
24 system for the purpose of reconstruction or a substantial remodel of  
25 the structure.

26 (2) The report documenting the inspection must certify that the on-  
27 site sewage disposal system functions properly. The inspection must  
28 include documentation of the current condition of the on-site sewage  
29 disposal system, maintenance needs, any repairs made to correct  
30 improper functioning of the system, and that following the inspection  
31 and any necessary repairs the system is in compliance with the  
32 applicable rules and standards adopted by the board of health pursuant  
33 to RCW 43.20.050.

34 (3) The results of the on-site sewage disposal system inspection  
35 must be documented in an inspection report and be provided to the owner  
36 or operator of the system and the local health department. The  
37 inspection report must summarize the results of the inspection, list

1 any required corrective actions, and provide recommendations for  
2 improved maintenance of the system to ensure compliance with this  
3 chapter and RCW 43.20.050.

- 4 (4) An inspection is not required where:  
5 (a) An inspection of the system has occurred within the previous  
6 year and the report is on file with the local health jurisdiction;  
7 (b) The system has been installed within the previous five years;  
8 or  
9 (c) The sale is between spouses or resulting from marriage  
10 dissolution.

11 NEW SECTION. **Sec. 9.** The provisions of this chapter are  
12 supplemental to all other authorities governing on-site sewage disposal  
13 systems, including chapter 70.118 RCW and rules adopted under that  
14 chapter.

15 NEW SECTION. **Sec. 10.** (1) The department of health shall report  
16 to the appropriate committees of the senate and house of  
17 representatives by December 31, 2007, on progress in designating marine  
18 recovery areas and developing and implementing on-site sewage disposal  
19 system implementation plans for such areas.

20 (2) The report shall include information on:

21 (a) The status of plans in each county covered by sections 1  
22 through 9 of this act;

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

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

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

33 (e) Regulatory, statutory, and financial barriers to implementing  
34 the plan;

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



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

5 (3) Local health jurisdictions shall provide information and data  
6 requested by the department of health in developing the reports, and  
7 the department shall append all reports or information that the local  
8 health jurisdictions request to be included in the report.

9 **Sec. 11.** RCW 43.20.050 and 1993 c 492 s 489 are each amended to  
10 read as follows:

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

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

20 (b) Every two years, in coordination with the development of the  
21 state biennial budget, the state board shall prepare the state public  
22 health report that outlines the health priorities of the ensuing  
23 biennium. The report shall:

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

29 (iv) Be developed with the input of state health care agencies. At  
30 least the following directors of state agencies shall provide timely  
31 recommendations to the state board on suggested health priorities for  
32 the ensuing biennium: The secretary of social and health services, the  
33 health care authority administrator, the insurance commissioner, the  
34 superintendent of public instruction, the director of labor and  
35 industries, the director of ecology, and the director of agriculture;

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

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

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

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

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

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

16 (ii) Drinking water quality standards, monitoring requirements, and  
17 laboratory certification requirements;

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

19 (iv) Public water system planning and emergency response  
20 requirements;

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

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

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

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

33 (c) Adopt rules controlling public health related to environmental  
34 conditions including but not limited to heating, lighting, ventilation,  
35 sanitary facilities, cleanliness and space in all types of public  
36 facilities including but not limited to food service establishments,  
37 schools, institutions, recreational facilities and transient  
38 accommodations and in places of work;

1 (d) Adopt rules for the imposition and use of isolation and  
2 quarantine;

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

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

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

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

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

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

29 NEW SECTION. Sec. 12. A new section is added to chapter 90.50A  
30 RCW to read as follows:

31 (1) From funds appropriated in the biennial appropriations act for  
32 the purposes of this section, the department shall administer a program  
33 of financial assistance for the repair and replacement of on-site  
34 sewage disposal systems in counties with marine waters.

35 (2) Any public entity, including but not limited to cities,  
36 counties, conservation districts, public utility districts, and tribes,  
37 may apply to the department for a grant, loan, or a combination of a

1 grant and loan to finance a local assistance program. The department  
2 shall award financial assistance on a competitive basis, and shall  
3 provide a priority to funding programs targeted to on-site sewage  
4 disposal systems located in marine recovery areas designated by local  
5 health jurisdictions under section 3 of this act.

6 (3) The grant or loan agreement must be conditioned to require that  
7 low-income homeowners will be offered a grant instead of a loan for the  
8 repair or replacement of their on-site sewage disposal system. For  
9 purposes of this section, a person with a combined disposable income,  
10 as defined in RCW 84.36.383, of twenty-five thousand dollars or less  
11 qualifies as a low-income homeowner. The public entity shall advise  
12 the department of the geographic scope of the local program, and an  
13 estimate of the proportion that low-income homeowner applicants for on-  
14 site sewage disposal system grants bears to the total anticipated  
15 applications. The department must endeavor to offer a grant amount in  
16 a similar proportion to the total grant and loan assistance offered.

17 (4) A public entity receiving a grant or loan under this section  
18 shall include an element in the program to ensure proper inspection and  
19 maintenance of the systems repaired or installed with state provided  
20 financial assistance, to standards required by the local health  
21 jurisdiction.

22 (5) The department shall offer grants to local health jurisdictions  
23 proposing pilot programs to encourage the installation and proper  
24 operation and maintenance of alternative on-site sewage disposal  
25 systems that provide greater treatment performance in reducing nitrogen  
26 discharges to marine recovery areas.

27 (6) It is the intent of this section that funding for grants under  
28 this section be provided in appropriations from the water quality  
29 account created in RCW 70.146.030, and that funding for loans be  
30 provided in appropriations from the water pollution control revolving  
31 fund created in RCW 90.50A.020.

32 (7) The department shall administer loans from the water pollution  
33 control revolving fund consistent with the limitations of RCW  
34 90.50A.030 and 90.50A.050.

35 (8) The department, in cooperation with the Puget Sound action team  
36 and the department of health, must make reasonable efforts to promote  
37 this program with local health jurisdictions, local governments, and  
38 property owners.

1           (9) As used in this section, "on-site sewage disposal system" has  
2 the same meaning as defined in section 2 of this act.

3           NEW SECTION.   **Sec. 13.** Sections 1 through 9 of this act constitute  
4 a new chapter in Title 70 RCW.

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

--- END ---