
SECOND SUBSTITUTE SENATE BILL 5431

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 03/08/05.

1 AN ACT Relating to managing on-site sewage disposal systems in
2 marine areas; amending RCW 43.20.050, 43.155.010, and 43.155.050;
3 adding a new section to chapter 43.155 RCW; adding a new chapter to
4 Title 70 RCW; creating a new section; providing an effective date; and
5 declaring an emergency.

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

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

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

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

18 (3) Properly functioning on-site sewage disposal systems largely
19 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 1st
2 of each even-numbered year for adoption by the governor. The governor,
3 no later than March 1st 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 **Sec. 12.** RCW 43.155.010 and 1996 c 168 s 1 are each amended to
30 read as follows:

31 The legislature finds that there exists in the state of Washington
32 over four billion dollars worth of critical projects for the planning,
33 acquisition, construction, repair, replacement, rehabilitation, or
34 improvement of streets and roads, bridges, water systems, and storm and
35 sanitary sewage systems. The December, 1983 Washington state public
36 works report prepared by the planning and community affairs agency

1 documented that local governments expect to be capable of financing
2 over two billion dollars worth of the costs of those critical projects
3 but will not be able to fund nearly half of the documented needs.

4 The legislature further finds that Washington's local governments
5 have unmet financial needs for solid waste disposal, including
6 recycling, and encourages the board to make an equitable geographic
7 distribution of the funds.

8 It is the policy of the state of Washington to encourage self-
9 reliance by local governments in meeting their public works needs and
10 to assist in the financing of critical public works projects by making
11 loans, financing guarantees, and technical assistance available to
12 local governments for these projects.

13 It is the policy of the state of Washington to direct a portion of
14 the public works assistance account to support a financial assistance
15 program for the repair and replacement of on-site sewage disposal
16 systems in counties with marine waters. The use of the account for
17 this purpose accomplishes the same public purpose of protecting and
18 cleaning up state waters as the historical use of the account to assist
19 in the financing of large sanitary sewage systems.

20 **Sec. 13.** RCW 43.155.050 and 2001 c 131 s 2 are each amended to
21 read as follows:

22 The public works assistance account is hereby established in the
23 state treasury. Money may be placed in the public works assistance
24 account from the proceeds of bonds when authorized by the legislature
25 or from any other lawful source. Money in the public works assistance
26 account shall be used to make loans and to give financial guarantees to
27 local governments for public works projects. Moneys in the account may
28 also be appropriated to provide for state match requirements under
29 federal law for projects and activities conducted and financed by the
30 board under the drinking water assistance account. Moneys in the
31 account may also be used for grants and loans provided through the on-
32 site sewage disposal system repair and replacement program described in
33 section 14 of this act. Not more than fifteen percent of the biennial
34 capital budget appropriation to the public works board from this
35 account may be expended or obligated for preconstruction loans,
36 emergency loans, or loans for capital facility planning under this
37 chapter; of this amount, not more than ten percent of the biennial

1 capital budget appropriation may be expended for emergency loans and
2 not more than one percent of the biennial capital budget appropriation
3 may be expended for capital facility planning loans.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.155
5 RCW to read as follows:

6 (1) From funds specifically appropriated in the biennial
7 appropriations act for the purposes of this section, the department
8 shall administer a program of financial assistance for the repair and
9 replacement of on-site sewage disposal systems in counties with marine
10 waters. For purposes of this section, on-site sewage disposal system
11 has the same meaning as defined in section 2 of this act.

12 (2) The department shall design an application process for this
13 financial assistance in coordination with the Puget Sound action team
14 and the departments of health and ecology. The department may contract
15 with private financial institutions to administer the banking functions
16 involved in this financial assistance program. The application process
17 must ensure that:

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

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

25 (c) Applicants will provide proper inspection and maintenance of
26 the system repaired or installed to standards required by the local
27 health jurisdiction and applicable standards under rules adopted by the
28 state board of health.

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

1 NEW SECTION. **Sec. 15.** Sections 1 through 9 of this act constitute
2 a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 July 1, 2005.

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