

HOUSE BILL REPORT

SHB 2522

As Passed House:

February 13, 2008

Title: An act relating to clarifying the civil penalty provisions for on- site sewage disposal systems administered by local health jurisdictions.

Brief Description: Regarding civil penalty provisions for on-site sewage disposal systems administered by local health jurisdictions.

Sponsors: By House Committee on Select Committee on Environmental Health (originally sponsored by Representatives Hudgins, Campbell and Chase).

Brief History:

Committee Activity:

Select Committee on Environmental Health: 1/16/08 [DPS].

Floor Activity:

Passed House: 2/13/08, 94-2.

Brief Summary of Substitute Bill

- Clarifies the civil penalty provisions for on-site sewage disposal systems administered by local health jurisdictions.

HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Campbell, Chair; Hudgins, Vice Chair; Sump, Ranking Minority Member; Chase, Hailey, Morrell, Newhouse and Wood.

Staff: Brad Avy (786-7289).

Background:

Engrossed Substitute Senate Bill 5894 that passed into law in 2007 added a new section to RCW 70.118 that authorizes local health officers responsible for administering and enforcing on-site sewage disposal system regulations to issue civil penalties for violations of those regulations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

This authorization is under the same limitations and requirements imposed on the state Department of Health under the large on-site sewage system statute's civil penalty provisions. The intent of SHB 2522 is to clarify that the statutes and limitations under the general on-site sewage system statute applies to local health jurisdictions and their administrative processes.

Summary of Substitute Bill:

The substitute bill amends the civil penalty provisions of the general on-site sewage disposal systems statute and clarifies that these statutes and limitations apply to local health jurisdictions and their administrative processes.

Civil Penalty Provisions

Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with on-site sewage disposal system requirements.

Every person who, through an act of commission or omission, procures, aids or abets a violation is subject to the penalty provisions.

The penalty provided for must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed is due 28 days after receipt of notice unless application for an appeal is filed.

Within 28 days after notice is received, the person incurring the penalty has the right to appeal as governed by the local health jurisdiction's administrative appeals process. Notice must be provided by the local health jurisdiction consistent with its due process requirements.

A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within 30 days of service of the final administrative order shall pay, in addition to the amount of the penalty: (1) interest at the rate of 1 percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and (2) reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate:

- enter a judgment on behalf of the local health jurisdiction;

- order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court; or
- enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing.

The judgment may award reasonable attorneys' fees for the cost of legal representation in representing the local health jurisdiction.

If no appeal is taken from a final administrative order assessing a civil penalty, the local health jurisdiction may file a certified copy of the final administrative order with the clerk of the superior court in which the on-site sewage disposal system is located and the clerk shall enter judgment in the name of the local health jurisdiction and in the amount of the penalty assessed in the final administrative order.

A judgment entered has the same force and effect as, and is subject to, all of the provisions of law relating to a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

The maximum penalty for violating a law or rule regulating general on-site sewage disposal systems is \$1,000 per violation.

All receipts from penalties imposed under this section shall be deposited into the General Fund or funds of the entity or entities operating the local health jurisdiction.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The bill and substitute bill clarifies what was done last year. All of this is already in law, it just clarifies. Local government supported this bill when it was part of another piece of legislation last session and continues to support it today. Mason County rarely has the need to levy civil fines in the on-site program. For flagrant violations, when a tool is needed, the previous penalty of \$100 didn't pose much of a disincentive; but a \$1,000 fine is a meaningful amount. Most installers and most homeowners want to do the right thing and choose to do the right thing. A tool is needed to be able to address those, who on rare occasions, simply do not want to work together. This bill does not change enforcement or roles and responsibilities. It does not change, nor transfer, any local responsibilities. This bill gives a stronger tool for potentially dealing with any recalcitrant folks on their septic systems.

(Opposed) None.

Persons Testifying: Representative Hudgins, prime sponsor; and Vicki Kirkpatrick, Mason County Health Department, Washington State Association of Counties, and Washington State Association of Public Health.

Persons Signed In To Testify But Not Testifying: None.