

HOUSE BILL REPORT

HB 2186

As Reported by House Committee On: Local Government

Title: An act relating to local government selection of the appropriate sewer systems as part of growth management.

Brief Description: Concerning local government selection of the appropriate sewer systems as part of growth management.

Sponsors: Representatives Takko, Orcutt, Reykdal, Fey, S. Hunt, Wilcox, Green, Haler, Buys, Blake and Van De Wege.

Brief History:

Committee Activity:

Local Government: 1/15/14, 1/27/14 [DPS].

Brief Summary of Substitute Bill

- Authorizes counties and cities to allow approved and conforming on-site sewage systems as an alternative to mandatory sewer system connections if the property is within an urban growth area and if connecting to a sewer system is cost prohibitive to a property owner.
- Defines related terms, including "cost prohibitive."
- Requires the Department of Commerce to update guidance to sanitary sewer system service providers with respect to mandating connections to sewage systems.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Takko, Chair; Gregerson, Vice Chair; Farrell, Fitzgibbon and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Pike and Taylor.

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.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act - Introduction.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all requirements of the GMA.

Urban Growth Areas - General Requirements, Planning, and Service Considerations.

Among other requirements, counties that fully plan under the GMA must designate urban growth areas (UGAs), areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Fully planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period. This 20-year planning period has planning and service implications. For example, the Growth Management Hearing Board, the quasi-judicial board established in the GMA, has found that counties have an obligation to bring already developed areas within a UGA to an urban level of service within the 20-year planning period.

With respect to urban service provisions in UGAs, the Department of Commerce (Commerce), the agency charged with providing technical and financial assistance to jurisdictions that must implement the GMA, indicates in its agency rules that the use of on-site sewer systems within UGAs may be appropriate in limited circumstances where there is no negative effect on basic public health, safety, and the environment, and where the use of on-site sewer systems does not preclude development at urban densities.

Urban Growth Area-Related Limitations Upon the Expansion of Urban Governmental Services.

The GMA includes general standards that must be met for the limited extension or expansion of urban governmental services, a term defined to include storm and sanitary sewer systems, in rural areas. More specifically, the GMA states that:

"In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development."

This provision was interpreted by the Washington Supreme Court (Court) to require a general prohibition of the extension of sewer lines beyond UGA boundaries, as in *Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1 (2002), the Court found, in part, that a more restrictive definition of "necessary," as the statutory term is

applied to the extension or expansion of urban governmental services, is consistent with the Legislature's intent in enacting the GMA to protect the rural character of an area.

Summary of Substitute Bill:

Counties and cities may allow approved and conforming on-site sewage systems that meet applicable codes and standards as an alternative to mandatory sanitary sewer system connections for existing, individual, on-site sewage systems if: the property served by the on-site sewage system is located within existing development of an UGA; and the cost to a property owner to connect to a sanitary sewer system is cost prohibitive.

The following terms are defined:

- "Cost prohibitive" means that the cost to a property owner to connect to a sanitary sewer system exceeds the total installed cost of a site-specific, approved on-site sewage system by the greater of either 15 percent or \$5,000.
- "Cost of an approved on-site sewage system" includes all direct and indirect costs associated with the design, application, permitting, approval, installation, material, and other appurtenances, including final inspection of the on-site system.
- "Cost to a property owner to connect to a sanitary sewer system" includes all direct and indirect costs associated with the requirement of the property owner to connect.
- "Existing" means in existence when the county or city is considering whether to allow an approved and conforming on-site sewage system in accordance with the authority to allow these systems.

By November 1, 2015, Commerce must update its guidance to sanitary sewer system service providers with respect to factors that it recommends the service providers consider when they are determining whether to exercise their authority to mandate connections to sanitary sewer systems. In updating this guidance, Commerce must, at a minimum, consult with stakeholders representing on-site septic operators, cities, counties, special purpose districts, the environmental community, and the business community.

Substitute Bill Compared to Original Bill:

The amended bill makes the following changes to the original bill:

- modifies the proposed criteria by which cities and counties may allow approved on-site sewage systems as an alternative to mandatory sanitary sewer system connections by specifying that the on-site systems must be conforming and must meet applicable codes and standards;
- specifies that an allowable alternative must be "for existing, individual on-site sewage systems";
- modifies the definition of "cost prohibitive" by specifying that the term means that the total sanitary sewer connection cost exceeds the total installed cost of a site-specific, approved on-site sewage system (rather than the total cost of an approved on-site sewage system) by the greater of either 15 percent or \$5,000 (rather than only 15 percent);

- defines "existing," to mean in existence when the county or city is considering whether to allow an approved and conforming on-site sewage system in accordance with specified provisions; and
 - charges Commerce with, by November 1, 2015, consulting with stakeholders and updating guidance to sanitary sewer system service providers with respect to factors that it recommends the service providers consider when determining whether to exercise their authority to mandate connections to sanitary sewer systems.
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Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) It can be very expensive to connect to a sewer system, and this bill provides an alternative to allow for on-site systems. The original language of the bill may not reflect the final language of the bill.

Imagine a scenario where a homeowner has a problem with an on-site system and is informed that the repair cost will be \$8,000. Now imagine that the city declines the permit because a sewer line is 300 feet away and the homeowner is now required to connect to the sewer. That connection cost may be \$37,000 or more, and it may entice the homeowner to avoid calling a contractor when a system is failing. Currently, random people are asked to shoulder the significant cost of connecting to sewer lines.

In Washington, 35-40 percent of homes currently use on-site sewage systems. The permission to allow the use of on-site systems already exists in agency rules, including an allowance for cost-prohibitive exceptions, but "cost prohibitive" is not defined. Regarding the 15 percent cost threshold, a hard number may work today, but it might not be appropriately indexed in the future. On-site septic operators are not opposed to sewer system connections — they recognize that in some cases on-site systems cannot meet current requirements. Considerations of maintenance and lifetime costs have been incorporated into the bill.

Developments with on-site systems have been enticed to be included within urban growth areas (UGAs) in order to receive urban services. No one really knows what cost prohibitive means, so the term in the agency rules has been somewhat ignored.

(With concerns) This bill appears to be a reaction to a previous legislative proposal. Water-sewer districts have numerous and diverse opinions about the bill, but concerns center upon the proposed "cost prohibitive" definition and how it might be applied. The Local Government Committee considered latecomer agreement legislation in 2013 – what impact might this bill have on that enacted legislation?

Water-sewer districts have serious concerns about the bill. If a general purpose government has approved the extension of sewers beyond city limits, and then is asked to unravel the system with exceptions, the financial planning could be undone, as could cost-sharing assumptions. The bill does not mention health districts that have responsibilities related to water. There is no requirement in the bill to consult with water-sewer districts. The "may approve" authority does not include related criteria must be used in making discretionary decisions. The 15 percent cost threshold may not be appropriate or inclusive. The placement of the proposed amendment, within the GMA, may make the law difficult to find for districts that must implement it.

There can be significant cost differences between on-site systems and sewer systems. Cities have a legal responsibility to provide sewer connections in UGAs. Cities also have obligations to provide these connections in a cost effective manner, and have public health responsibilities. Sewer infrastructure is expensive to provide, and this bill has cost sharing implications. Some jurisdictions may not realize that they currently have flexibility to approve on-site systems. Cities believe the 15 percent cost threshold is too low, and are concerned about lawsuit implications related to the bill. Additionally, the terms "approved" and "existing development" are not defined. Perhaps the bill should be limited to residential development.

This bill is not sufficiently clear: no timeline is provided in the bill to make determinations about the requests for on-site systems, and the term "may allow" may invite legal challenges, as people may assert that the governmental decision was arbitrary. Additionally, a bottom-line dollar threshold should be established instead of a percentage. As an alternate approach, mandated connections could be made contingent upon a city providing financing for the connection.

Despite advances in septic system technology, water professionals indicate that sewer systems are generally more effective at treating water than on-site systems. The reason for this is maintenance – many small systems are not properly maintained like the large sewer systems. This bill has concerning lot size implications. This bill will result in cost-effective conversions being considered cost-prohibitive. Perhaps the formula connection rate should be based on the value of the home. The current rules of Commerce should be supported and perhaps they should be charged with developing definitions for the terms in their rule.

Throughout the state UGAs differ, as some are very rural while others are very urban. Counties have concerns about the language, as it is very broad and its implications are not clear.

Futurewise has particular concerns about the intent language in the bill. Previously, the Growth Management Hearings Board has indicated that UGAs need to be sewered. This bill could change this requirement and could be improved with conditions and parameters.

(Opposed) None.

Persons Testifying: (In support) Representative Takko, prime sponsor; Tim Johnson and John Thomas, Washington On-Site Sewage Association; and Bill Creveling, Washington On-Site Sewage Association.

(With concerns) Joe Daniels, Washington Association of Sewer and Water Districts; Steve Lindstrom, Sno-King Water District Coalition; Carl Schroeder, Association of Washington Cities; Alex Soldano, Cities of Pasco and Lakewood; Bruce Wishart, Puget Sound Keeper Alliance; Laura Merrill, Washington State Association of Counties; and Kelsey Beck, Futurewise.

Persons Signed In To Testify But Not Testifying: None.