

HOUSE BILL REPORT

HB 1503

As Reported by House Committee On: Environment

Title: An act relating to preventing unfunded mandates involving on-site sewage systems from affecting local governments and property owners.

Brief Description: Preventing unfunded mandates involving on-site sewage systems from affecting local governments and property owners.

Sponsors: Representatives Short, Taylor, Van Werven, Buys, Haler, Kraft and Hargrove.

Brief History:

Committee Activity:

Environment: 1/30/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Declares that the Growth Management Act (GMA) does not preclude counties from certifying homeowners, or their family members or tenants, to inspect their on-site sewage systems (OSS).
- Limits the self-inspection of OSS in counties where failing OSS have been identified as impacting water quality to only be allowed under certain circumstances where six qualifying criteria are met.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Kagi and McBride.

Minority Report: Do not pass. Signed by 1 member: Representative Fey.

Staff: Jacob Lipson (786-7196).

Background:

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.

Septic Systems Permitting.

The State Board of Health (BOH) adopts rules addressing the design, construction, installation, operation, and maintenance of on-site sewage systems (OSS), while local health jurisdictions (LHJs) in each county administer and enforce those OSS regulations alongside any additional local requirements.

Owners of an OSS are generally responsible for maintaining the OSS, including associated repair and upkeep costs. Once an OSS has been installed, the system must be inspected at least once every three years if the system has a septic tank and relies on a gravity-powered drain field, or at least once per year for other types of OSS, unless a LHJ requires more frequent inspections. Under BOH rules, LHJs may require OSS operation permits, and may require owners to secure and renew contracts for periodic maintenance. When an OSS is repaired after a failure that threatens public health by inadequately treating sewage, the BOH's rules require a LHJ to track the future performance of the OSS through a repair permit that includes specified minimum OSS performance standards.

Twelve counties in Washington are located within the Puget Sound basin. Within the basin, there are an estimated 600,000 OSS. Beginning in July 2007, the LHJs in the 12 counties bordering the Puget Sound basin were required to develop an OSS management plan. Each LHJ was required to have its OSS management plan approved by the Department of Health (DOH). The OSS plans in the 12 counties within the Puget Sound basin are required to include certain components that are not required of OSS in other counties, including proposing marine recovery areas where OSS are a significant contributing factor to certain water quality and aquaculture concerns.

Growth Management Act Comprehensive Plans.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

Each comprehensive plan adopted by a county or city must include seven mandatory elements consisting of a plan, scheme, or design. Two of the seven mandatory elements that must be included in comprehensive plans contain provisions addressing the protection of aspects of water quality: the land use element and the rural element. Specifically, the land use element must provide for the protection of the quality and quantity of groundwater use for public water supplies. The rural element must include measures that protect the rural character of an area by protecting surface and groundwater resources. A recent state

Supreme Court decision found a Whatcom County rural element policy that allowed private homeowners in rural areas to inspect their own septic systems, rather than requiring professional inspections, did not comply with the county's obligations to protect water resources under the GMA.

Summary of Substitute Bill:

The GMA does not preclude counties from authorizing OSS self-inspections by homeowners, their tenants, or their family members upon completion of county certification requirements. However, OSS programs may not allow self-inspection in areas where the county, LHJ, or the Department of Ecology have identified a water quality problem linked to poorly functioning OSS, unless the following six conditions are met:

- the OSS is not in an area within one of the 12 counties bordering Puget Sound that has been designated as a marine recovery area;
- the OSS treats sewage only from a single-family residence or duplex;
- the OSS uses a gravity-flow dispersion system without electrical components;
- the OSS is not operating under the conditions established by a repair permit issued by a LHJ as a result of the OSS having previously failed;
- the person performing the inspection is the property owner, the property owner's family member, or is a resident of the property; and
- the LHJ makes available educational materials, training opportunities, and technical assistance to homeowners performing OSS self-inspections.

Substitute Bill Compared to Original Bill:

Provisions establishing that the operations, maintenance, repair, and inspection of OSS are not addressed by the GMA are eliminated. Provisions establishing that LHJs are not required to mandate that OSS inspections be performed by professional inspectors are also eliminated. Instead, the GMA does not entirely preclude counties from authorizing OSS self-inspections by homeowners that have completed a county certification.

The OSS program may not allow self-inspection in areas where the county, LHJ, or the Department of Ecology have identified a water quality problem linked to poorly functioning OSS, unless the following six conditions are met:

- the OSS is not in an area within one of the 12 counties bordering Puget Sound that has been designated as a marine recovery area;
 - the OSS treats sewage only from a single-family residence or duplex;
 - the OSS uses a gravity-flow dispersion system without electrical components;
 - the OSS is not operating under the conditions established by a repair permit issued by a LHJ as a result of the OSS having previously failed;
 - the person performing the inspection is the property owner, the property owner's family member or is a resident of the property; and
 - the LHJ makes available educational materials, training opportunities, and technical assistance to homeowners performing OSS self-inspections.
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Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2017.

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) When local jurisdictions are not allowed to authorize people to self-inspect their OSS, it provides an avenue for businesses to substantially increase their costs. Prohibiting self-inspection will impose significant costs on OSS owners and the community. There are many other laws that provide adequate protection for water quality, and the GMA does not need to impose additional water quality requirements. The state Supreme Court legislated from the bench in its recent decision addressing the protections of water quality under the GMA. This court decision threatens the economic viability of rural areas. In light of the recent court decision, the Legislature must clarify the appropriate management requirements for septic tanks. This bill corrects the recent Supreme Court decision.

(Opposed) The recent Supreme Court decision addressing groundwater resource protection under the GMA had two parts: a part dealing with the legal availability of water; and a part regarding the protection of water quality. This bill addresses the portion of the decision addressing the water quality impacts of OSS, and relied on finding a significant disparity in the OSS failure rates of self-inspected systems and professionally inspected systems. Local governments should be required to find ways to protect groundwater under their GMA plans. Significant numbers of OSS in Puget Sound are not well maintained and are failing. The Legislature intended, when it enacted the GMA, to protect water quality objectives.

Persons Testifying: (In support) Representative Buys; Glen Morgan, Citizens Alliance for Property Rights; Tom Davis, Washington Farm Bureau; and Jeanette McKague, Washington Realtors.

(Opposed) Bryce Yadon, Futurewise; and Bruce Wishart, Puget Soundkeeper Alliance.

Persons Signed In To Testify But Not Testifying: None.