

SENATE BILL REPORT

EHB 1476

As of February 22, 2018

Title: An act relating to ensuring the ongoing viability of safe, reliable, on-site sewage systems in marine counties by identifying best management practices with accountability in on-site program management plans without creating or newly authorizing a fee or other program funding source.

Brief Description: Ensuring the ongoing viability of safe, reliable, on-site sewage systems in marine counties by identifying best management practices with accountability in on-site program management plans without creating or newly authorizing a fee or other program funding source.

Sponsors: Representatives Peterson, Buys, Van Werven and Short.

Brief History: Passed House: 3/08/17, 72-25; 2/01/18, 62-32.

Committee Activity: Local Government: 3/21/17.

Energy, Environment & Technology: 2/21/18.

Brief Summary of Bill

- Requires the local health jurisdictions in the 12 counties bordering Puget Sound to submit updated on-site sewage program management plans for approval by the Department of Health (DOH) at least once every five years.
- Adds new requirements to the plans that must be developed by those local health jurisdictions.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Alex Fairfortune (786-7416)

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Staff: Jan Odano (786-7486)

Background: The State Board of Health (SBOH) is authorized to adopt rules for the design, construction, installation, operation, and maintenance of on-site sewage systems with design

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flows of less than 3500 gallons per day. The SBOH may also adopt rules for additional criteria for approving OSS management plans.

In 2006, the Legislature found that Hood Canal and other areas of Puget Sound were at risk of severe loss of marine life due to low-dissolved oxygen. The findings also included that properly functioning on-site sewage systems (OSS) and enhanced local programs to identify and correct failing OSS were effective in reducing and eliminating public health hazards, improving water quality and reopening previously closed shellfish areas.

As a result of legislation in 2006, the local health officers of the 12 counties bordering Puget Sound were required to have a written OSS program management plan to provide guidance to the local health jurisdictions (LHJs). The OSS program management plans must include a determination of marine recovery area (MRA) when it was determined that existing OSS provide a significant contribution to the degradation of shellfish growing areas, marine waters listed by the Department of Ecology for low-dissolved oxygen levels or fecal coliform, or marine waters where nitrogen has been identified as a contaminant of concern.

The local health officer must develop and implement an OSS strategy to manage OSS within the MRA. The OSS strategy must address how the LHJs will find:

- failing OSS and ensure system owners make necessary repairs; and
- unknown systems and ensure these OSS are inspected, functioning properly, and repaired, if necessary.

In addition, local health officers in an MRA must develop or enhance an OSS database to manage OSS disposal systems.

All OSS program management plans were to be submitted for review by DOH. DOH must provide assistance to LHJs to develop

- electronic data systems;
- OSS program management plans; and
- methods for finding unknown systems.

DOH must contract with each Puget Sound LHJ to implement plans, and develop electronic database systems provisions for state assistance in updating the OSS program management plan.

Summary of Bill: On-Site Sewage Program and Plans. At least once every five years, local health officers must update and submit for review and approval OSS program management plans to DOH.

The OSS program management plans must include:

- tracking procedures for failure rates of different types of OSS technologies and designs;
- steps to be taken in the next five years that will result in implementation of the OSS program management plan, including identification and inspection of 20 percent of the previously unknown OSS and inspection of known OSS;
- plans for ensuring OSS inspections occur consistent with SBOH rules; and

- financial assurance component that demonstrates that the LHJ has sufficient funding to implement the next two years of the program.

Every two years, the local health officer must submit a report to DOH summarizing the progress made on meeting OSS program management plan milestones.

OSS program management plans must be submitted, reviewed, and approved by DOH. DOH must determine if the plans:

- are adequate to protect public health and safety by preventing injury and death;
- include procedures for tracking failure rates and program implementation progress; and
- fulfill the required SBOH minimum OSS program management plan standards.

Public Health and Safety. DOH must ensure that OSS program management plans have addressed public health and safety and preventing injury or death from improper operation and maintenance of OSS. LHJ with MRAs must show progress in working with OSS owners of failing and unsafe systems, which must be included as a focus in the MRA OSS strategies.

DOH must assist LHJ with identifying best practices to be used by OSS owners, operators, and installers to ensure safe operation and maintenance of OSS. This includes the design and maintenance of OSS risers and lids.

A definition of unsafe system is provided to include a system that threatens public safety by creating conditions that could lead to injury or death due to malfunctioning or missing components.

SBOH Rules. If the SBOH adopts additional criteria for approving OSS program management plans, the rules may not take effect until one year after the rule is adopted. The rules must require that inspections by professional inspectors or the public agency must be coordinated and authorized by the OSS owner. The SBOH is authorized, but not required to adopt new or updated rules for OSS program management plans, inspection and design criteria or standards.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Local Government): *Testimony from 2017 Regular Session.* PRO: Over the past three to four years there has been an increase in the effort of local governments to raise septic fees. In each case the groups proposing the fee were not able to show how they came up with the fee amount. This bill asks local jurisdictions to develop funding plans to show how they are using existing resources and how they plan to use resources in the future. It will also make sure counties have the information they need to make sure failing septic systems are recorded. This will help demystify misconceptions

around septic and show they are not outdated, ineffective systems but an integral part of protecting groundwater and the Puget Sound.

CON: While the planning requirements and safety consideration elements of the bill are good, the primary concern is the requirement to update the plan with no assurance of funding. The process takes several years and includes stakeholder outreach, community workshops, hearings, briefings, and other components. One such update cost \$144,000. That was possible through an EPA grant, but EPA funding is in jeopardy and may not be able to support updates every five years.

Persons Testifying (Local Government): PRO: Representative Strom Peterson, Prime Sponsor; Tim Johnson, Washington On-Site Sewage Association.

CON: Art Starry, Thurston Public Health, Washington Association of Local Public Health Officials.

Persons Signed In To Testify But Not Testifying (Local Government): No one.

Staff Summary of Public Testimony (Energy, Environment & Technology): PRO: The number of OSS under management has barely changed in the past 11 years. We are concerned that those with the lowest fees and taxes to the most work, while those with the highest taxes and fees have done far less. We would like more transparency to see what the fees are being used for. We need better planning and better transparency to see what the plans are for more funding. Not all local health jurisdictions management plans are effective. We don't believe this is an unfunded mandate. DOH brings accountability to LHJs and would bring a framework around SBOH rules. This is a common sense approach with modest goals. It will help to ensure LHJs have resources.

CON: This will result in increased programmatic requirements. Without funding LHJs will have to redirect current funding from programs such as school inspections and health programs. Funding would be better directed to projects to recover certain areas rather than putting more words on paper. We lack general funding to put towards public health. There is not an appetite for more fees. GF dollars are not available at the county level.

Persons Testifying (Energy, Environment & Technology): PRO: Representative Strom Peterson, Prime Sponsor; Tim Johnson, Washington On-Site Sewage Association; John Thomas, Washington On-Site Sewage Association; Jeanette McKague, Washington REALTORS; Cindy Alia, Citizens Alliance for Property Rights; bruce wishart, Puget Soundkeeper.

CON: Nicole Thomsen, Snohomish Health District; Laura Berg, Washington Association of Counties; Brynn Brady, Washington Association of Local Public Health Officials; Nicole Thompson, Snohomish County Public Health.

Persons Signed In To Testify But Not Testifying (Energy, Environment & Technology): No one.