

# SENATE BILL REPORT

## ESSB 5281

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As Passed Senate, March 1, 2017

**Title:** An act relating to state board of health rules regarding on-site sewage systems.

**Brief Description:** Concerning rules for on-site sewage systems.

**Sponsors:** Senate Committee on Local Government (originally sponsored by Senators Angel, Fortunato, Takko, Fain, Sheldon and Hobbs).

**Brief History:**

**Committee Activity:** Local Government: 1/31/17, 2/14/17 [DPS].

**Floor Activity:**

Passed Senate: 3/01/17, 29-20.

**Brief Summary of Engrossed First Substitute Bill**

- Prohibits the State Board of Health from making specific use permit, easement, and replacement rules regarding on-site sewage systems.
- Requires local jurisdictions, officers, and employees who enforce rules adopted by the State Board of Health to comply with the same rule limitations.

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### SENATE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5281 be substituted therefor, and the substitute bill do pass.

Signed by Senators Short, Chair; Angel, Vice Chair; Takko, Ranking Minority Member; Palumbo and Sheldon.

**Staff:** Alex Fairfortune (786-7416)

**Background:** Washington State Board of Health. The Washington State Board of Health (Board) was established by the Washington State Constitution to serve the health and safety of the people of Washington. The Board is composed of ten members, including the Secretary of Health and nine members appointed by the Governor. The Board is authorized to adopt rules for a variety of public health issues, including the design, construction,

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*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.*

installation, operation, and maintenance of small on-site sewage systems. All local boards of health and health officials must enforce the rules adopted by the Board.

Small On-site Sewage Systems. Small on-site sewage systems (systems), also known as septic systems, have design flows of less than 3500 gallons per day. These systems are located on or near the property they serve, and convey, store, treat, and disperse sewage. There are approximately 950,000 systems in Washington.

Any person proposing to install, repair, modify, connect to, or expand a system must obtain a permit from a local health officer. If a system serves more than one development, a permit applicant must show that an approved public entity owns or manages the system. Alternatively, the applicant may show proof of a management arrangement for the system, including a recorded easement allowing access for construction, operation, monitoring maintenance, and repair. A local health officer may stipulate additional requirements for a permit if necessary for the protection of public health. A local health officer may also revoke or deny a permit for just cause, including threats to public health and failure to meet state law or local regulations.

A system owner is responsible for monitoring and maintaining their system to minimize the risk of failure. If a system fails and a public sewer system is available within 200 feet, a public health officer may require hook up to the public sewer or permit the repair or replacement if a conforming system can be installed. A conforming system is a system that is currently in full compliance with new construction requirements or a system that was approved, installed, and operating in accordance with previous requirements.

**Summary of Engrossed First Substitute Bill:** Rules adopted by the Board for small on-site sewage systems must not require the following:

- a use permit that is conditioned with a requirement for a monitoring contract between a private company and an individual;
- dedicated easements for the inspection, maintenance, or potential future expansion of a system; or
- replacement of an existing system if a repair returns the system to its previously permitted or original functioning state.

Local jurisdictions, officers, and employees who enforce rules adopted by the Board must comply with the same rule limitations.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is to protect property owners of on-site sewage systems from regulations that limit their property rights and their

ability to maintain their private systems. There is a disconnect regarding the mandate for public health to oversee the disposal of human waste. In King County, over 1 billion gallons of untreated sewage was dumped in one year. Annually, septic systems in King County fail only .3 percent of the time. Septic systems are not causing the pollution problems. All three provisions help protect the private rights of landowners. Easements are not necessary because local jurisdictions already have the authority to enter a property in the event of a public hazard or nuisance. Local property owners in some counties have been forced to sign expensive monitoring contracts with private entities that force them to buy services they don't need or want.

OTHER: This bill may reduce local health officers' abilities to ensure on-site sewage systems are appropriately operated and maintained. Limiting oversight could lead to reduced water quality, especially by removing their ability to require replacement of systems that, even if repaired to original functioning condition, may not adequately protect ground water from contamination. On-site sewage technology has advanced in recent years. Section D could allow an older systems to be repaired to an outdated, inadequate treatment technology.

**Persons Testifying:** PRO: Senator Jan Angel, Prime Sponsor; Jeanette McKague, Washington Realtors; Betsy Howe, COOMWA; Anna McLaughlin, citizen; Cecil Tomlinson, Property owner including OSS system; Dallas Baker, COOMWA; Shane Davies, citizen; Glen Morgan, Citizens Alliance for Property Rights; Ken Morse, NET Septic On-Site Designer.

OTHER: David DeLong, Washington State Board of Health; Rick Porso, Department of Health.

**Persons Signed In To Testify But Not Testifying:** No one.