

HOUSE BILL REPORT

SB 5503

As Passed House:
April 4, 2019

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

Brief Description: Concerning state board of health rules regarding on-site sewage systems.

Sponsors: Senators Das, Fortunato and Takko.

Brief History:

Committee Activity:

Environment & Energy: 3/18/19, 3/26/19 [DP].

Floor Activity:

Passed House: 4/4/19, 93-0.

Brief Summary of Bill

- Establishes requirements related to state Board of Health rules addressing the repair and inspections of on-site sewage systems.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Fey, Mead, Peterson and Shewmake.

Staff: Jacob Lipson (786-7196).

Background:

The state Board of Health (BOH) adopts rules addressing the design, construction, installation, operation, and maintenance of on-site sewage systems (OSS) with design flows of less than 3,500 gallons per day. Local health officers (LHO) in each county administer and enforce those OSS regulations alongside any additional or discrepant local requirements. The LHOs in all counties must develop a written plan for managing OSS.

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.

As part of their OSS plans, LHOs are authorized to require OSS owners to, among other criteria, provide dedicated easements for inspections, maintenance, and potential future OSS expansions. In addition, prior to issuing an installation permit for an OSS serving more than one development, LHOs must require a recorded easement allowing access for OSS construction, operation, monitoring, maintenance, and repair.

On-Site Sewage System Failures.

When an OSS fails, BOH rules require OSS owners to:

- repair or replace the OSS with a system that meets contemporary design and operational requirements for new OSS construction, meets requirements for OSS construction that had previously been authorized by BOH rules, or meets certain system performance criteria;
- connect to a large capacity OSS or sewer system; or
- where repair, replacement, or connection is not an option, use a holding tank, obtain a water discharge permit from the Department of Ecology with LHO certification that discharge is the only realistic dispersal method, or abandon the property.

Mandatory Connections to Public Sanitary Sewer Systems.

Upon the failure of an existing OSS, a LHO may require connection to a public sewer system if adequate public sewer services are available within 200 feet of the residence or facility. If a conforming system can be designed and installed, the LHO may also permit the repair or replacement of the OSS.

The owner of a residence or other facility served by an OSS may also be required to connect to a public sewer system when:

- connection is deemed necessary to protect public health by the LHO;
- an adequate public sewer becomes available within 200 feet of the residence or other facility as measured along the usual or most economically feasible route of access; and
- the sewer utility allows the sewer connection.

An OSS repair or replacement may take place either on the property served by the OSS or a nearby property if easements are obtained.

On-Site Sewage System Management Plans in Puget Sound Counties.

The 12 counties in Washington located within the Puget Sound basin must meet certain requirements in their written plans for managing OSS that do not apply to other counties. Beginning in July 2007, LHOs in the 12 counties bordering the Puget Sound basin were required to develop an OSS management plan. Each LHO was required to have its OSS management plan approved by the Department of Health (DOH), while the DOH was required to enter into contract with the LHOs for the implementation of the plans and the provision of state funding assistance. The management plans are intended to help owners of an OSS evaluate and maintain their systems.

The local management plans must include information on how the LHO will, among other things:

- maintain an inventory of all the OSS within the jurisdiction;
- identify areas where an OSS may pose an increased risk to public health;

- identify requirements for an OSS to address areas of increased risk; and
- help and encourage homeowners to inspect and maintain their OSS.

On-Site Sewage System Inspections, Operations, and Maintenance.

Owners of an OSS are generally responsible for maintaining the OSS, including associated repair and upkeep costs. Once an OSS system has been installed, the systems 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 LHO requires more frequent inspections. Under BOH rules, LHOs may require OSS operation permits and may require owners to secure and renew contracts for periodic maintenance.

The LHOs are empowered, under statutory authority apart from BOH rules, to apply to a court for an administrative search warrant if the LHO has requested to inspect a person's property, and the person has refused. In order to justify the LHO's search warrant, the LHO's request must show that:

- the testing is in response to pollution in freshwater or in shellfish growing areas;
- the LHO has developed a plan to respond to the pollution that targets specific properties for inspection, identified by address; and
- it is reasonable for the LHO to believe that pollution is coming from the property's OSS.

A court may grant an administrative search warrant request upon probable cause.

Summary of Bill:

Failures of On-Site Sewage Systems.

Rules adopted by the BOH regarding failures of OSS must adhere to the following principles:

- give first priority to repair and second priority to replacement of existing conventional OSS consisting of a tank and drainfield with similar systems;
- privately-owned OSS may not be subject to more stringent performance requirements than equivalent publicly-owned OSS; and
- the OSS must be allowed to be repaired using the least expensive alternative that meets standards and is likely to provide comparable or better long-term treatment or dispersal outcomes.

On-Site Sewage System Inspection Access and Notifications.

Rules adopted by the BOH regarding inspections of OSS must:

- require a professional inspector or public agency to coordinate with a property owner prior to accessing the property;
- require property owner authorization as a prerequisite for the inspection, unless the LHO obtains an administrative search warrant under existing LHO authority; and
- forbid LHOs from requiring, in order for a property owner to receive an OSS permit, that an inspection or maintenance easement be provided if the OSS is located on and serves a single dwelling unit.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Property owners with septic systems will benefit from the clarity provided in this bill. Some local jurisdictions were confused about the scope of private property protections from easements for septic system inspections, and this bill will ensure that private property owners receive notification before someone comes onto their property to inspect a septic system. Most septic systems are permitted systems that function effectively. There is bipartisan support for this bill.

(Opposed) None.

Persons Testifying: Senator Das, prime sponsor; Betsy Howe, Citizens Optimizing OSS Management Washington; and Cindy Alia, Citizens Alliance for Property Rights.

Persons Signed In To Testify But Not Testifying: None.