

HOUSE BILL REPORT

ESSB 5894

As Reported by House Committee On:
Environmental Health, Select
Appropriations

Title: An act relating to clarifying regulatory authority for large on- site sewage systems.

Brief Description: Clarifying the regulatory authority for on-site sewage systems.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Rockefeller, Poulsen, Fraser, Oemig, Shin and Carrell; by request of Department of Health).

Brief History:

Committee Activity:

Select Committee on Environmental Health: 3/20/07, 3/27/07 [DPA];
Appropriations: 4/2/07 [DPA(APP w/o ENVI)s].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)**

- Requires the Department of Health to establish comprehensive regulation of large on-site sewage systems with design flows between 3,500 and 100,000 gallons per day.
- Directs the Department of Health to adopt rules for regulation of large on-site sewage systems, including siting, design, construction, and permitting of the systems, in order to protect human health and the environment.

HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: Do pass as amended. Signed by 6 members: Representatives Campbell, Chair; Hudgins, Vice Chair; Chase, Hunt, Morrell and Wood.

Minority Report: Do not pass. Signed by 3 members: Representatives Newhouse, Ranking Minority Member; Sump, Assistant Ranking Minority Member and Hailey.

Staff: Amy McCormick (786-7290).

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.

Background:

On-site sewage systems (OSSs) commonly treat wastewater for homes, commercial establishments, and other locations that are not connected to a public sewer system. Properly designed, operated, and maintained systems protect the environment and public health by preventing untreated wastewater from coming into contact with people or waters.

The OSSs are regulated and characterized by wastewater flow. Smaller systems that handle up to 3,500 gallons per day (gpd) are regulated by local health departments under the State Board of Health rules. Legislation that was passed in 2006, relating to management of OSSs in marine recovery areas, focused on these smaller systems.

Large on-site sewage systems (LOSSs) handle wastewater flow of 3,500 to 100,000 gpd. The Departments of Ecology (DOE) and Health (DOH) have regulatory jurisdiction over LOSSs and divide responsibility over the management of LOSSs that dispose of 3,500 to 14,500 gpd of wastewater. The DOH manages non-mechanical systems with design flows between 3,500 to 14,500 gpd of wastewater. The DOE manages mechanical systems with flows between 3,500 and 14,500 gpd of wastewater, as well as all systems with flows over 14,500 gpd of wastewater.

Summary of Amended Bill:

The DOH is required to establish comprehensive regulation of LOSSs. A LOSS is defined as an OSS with design flows of between 3,500 and 100,000 gpd of wastewater and may include mechanical treatment. In order to protect human health and the environment, the DOH must: establish and provide regulation of LOSSs including design, construction, installation, operation, maintenance and repair; control and prevent pollution of the state's waters; issue permits for LOSSs; and enforce LOSS requirements. The LOSS may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and storm water systems. A previously convened work group must include recommendations for the development of certification or licensing of LOSS operators.

After July 1, 2009, a person may not install or operate a LOSS without an operating permit. The owner of a LOSS must obtain the permit from the DOH, and the permit must be renewed annually. The DOH must impose permit conditions or requirements for system improvements and compliance schedules at the time of initial permit application or permit renewal. The DOH may deny an application for a permit or modify, suspend, or revoke a permit if there is a finding of fraud or failure, refusal or inability to comply with permit requirements, and the permit applicant or permittee is provided the right to an adjudicative proceeding.

For systems with design flows of more than 14,500 gpd, the DOH must adopt rules to ensure adequate public notice and opportunity for review and comment on initial LOSS applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include electronic mail, posting on the DOH's internet site,

publication in a local newspaper, press releases, mailings, and other means. A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than 14,500 gpd, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the DOH within 28 days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt.

An owner of a LOSS previously permitted by the DOE must apply for an operating permit from the DOH 120 days prior to the expiration date of the DOE permit. All LOSSs that are required to have an operator certified through the DOE must continue to meet the DOE requirements.

The DOH must adopt rules for the comprehensive regulation of LOSSs. The DOH must, in consultation with the DOE, also require that LOSSs comply with the Clean Water Act. Adopted rules must be consistent with the requirements of any comprehensive plans or development regulations under the Growth Management Act or any applicable plans or development regulations of local jurisdictions.

A person who violates laws or rules regulating OSSs administered by the DOH is subject to penalties of not more than \$10,000 per day for every violation. A person incurring the penalty may file an application for an adjudicative proceeding and pursue subsequent judicial review.

A local health officer who is responsible for administering and enforcing regulations regarding OSSs is authorized to issue civil penalties for violations.

The State Board of Health is authorized to adopt rules for the design, construction, installation, operation, and maintenance of OSSs with design flows less than 3,500 gpd.

Operators of LOSSs permitted by the DOH or OSSs permitted by local health jurisdictions are exempted from certain DOE requirements.

Amended Bill Compared to Engrossed Substitute Bill:

The definition of an OSSs does not include a holding tank that pumps to a sewer. The amended bill clarifies that a permit applicant or permittee has the right to an adjudicative proceeding. For LOSSs disposing of more than 14,500 gpd of waste, the DOH is required to adopt rules to ensure notice and opportunity for review of initial permit applications and applications for substantial modifications. A person aggrieved by the issuance of an initial permit or a permit for substantial modifications for LOSSs disposing of more than 14,500 gpd of waste has the right to an adjudicative proceeding.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Puget Sound Partnership team identified the split jurisdiction of the DOH and the DOE as a problem and recommended that the joint authority be consolidated to strengthen and clarify the oversight of septic system management. This bill is an important add-on to last year's legislation that dealt with smaller on-site septic systems. This bill clarifies the regulatory authority between the departments, and the permitting of systems will provide for greater oversight capabilities, and set the direction for operation and maintenance. This bill has important applications, not only in the Puget Sound area, but also statewide. Funding for the program comes from permit fees, so there would be no direct transfer of funding from DOE and DOH. This bill clarifies civil penalty authorities for the DOH and also for local health jurisdictions. This bill would improve environmental protections by making clear that the agencies have authority as they permit the septic tank systems. Proposed amendments would clarify public notice provisions and appeals process for oversight of the OSSs, so that there is an open process, and neighbors and the community can be involved in any appeals of the permitting of these systems.

(Opposed) None.

Persons Testifying: Senator Rockefeller, prime sponsor; Maryanne Guichard, Department of Health; Melodie Selby, Department of Ecology; and Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environmental Health, Select. Signed by 22 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Hinkle, Kretz, McDonald, Priest and Walsh.

Staff: Bernard Dean (786-7130).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Select Committee on Environmental Health:

The Appropriations Committee added a null and void clause to the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is part of the Puget Sound Partnership and is supported by the Governor. It is very important for the clean up of Puget Sound. We view this as an important next step in advancing the state's water quality protection efforts in the Puget Sound. The fiscal impacts for the activities in this bill are covered in the Governor's budget and in the Senate budget, but are not fully covered in the House budget. The Department of Health currently regulates the majority of these systems but at a much different level than what is being called for in this bill. The scope of the current regulations are focused on the public health aspects of on-site sewage systems. The bill would expand that to look at environmental health and also expand the need for annual operating permits.

(Opposed) None.

Persons Testifying: Kathleen Drew, Office of the Governor; and Gregg Grunenfelder, Department of Health.

Persons Signed In To Testify But Not Testifying: None.