

# HOUSE BILL REPORT

## EHB 1476

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**As Passed House:**  
February 1, 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:**

**Committee Activity:**

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

**Floor Activity:**

Passed House: 3/8/17, 72-25.

**Floor Activity:**

Passed House: 2/1/18, 62-32.

**Brief Summary of Engrossed Bill**

- Requires the local health jurisdictions (LHJs) in the 12 counties bordering Puget Sound that were required in 2007 to develop written on-site sewage system (OSS) program management plans to submit updated versions of those plans for approval by the Department of Health at least once every five years.
- Adds new requirements to the LHJ OSS programs and plans that must be developed in the 12 Puget Sound counties, including tracking the failure rate of septic designs and technologies, taking steps to identify previously unknown OSS and to inspect known OSS, and the incorporation of elements to prevent injury or death caused by unsafe OSS.

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### HOUSE COMMITTEE ON ENVIRONMENT

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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.*

**Majority Report:** Do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Buys, Fey, Kagi and McBride.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Dye.

**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 system (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. 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 county health officer requires more frequent inspections. In general, the owner bears the costs associated with repair and upkeep of the OSS.

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, 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), while the DOH was required to enter into contract with the LHJs 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. When developing the management plans, the LHJ must propose marine recovery areas where OSS are a significant contributing factor to concerns associated with: shellfish growing, marine waters with low-dissolved oxygen or fecal coliform, and waters where nitrogen is a contaminant. These local management plans must include information on how the LHJ will, among other things:

- maintain an inventory of all the OSS within the LHJ;
- 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.

### **Summary of Engrossed Bill:**

#### On-Site Sewage Programs and Plans.

The LHJs in the 12 counties bordering the Puget Sound basin must submit updated OSS management plans to the DOH for review and approval at least once every five years to implement local priorities and program requirements and state standards, including rules adopted by the BOH. The LHJs must also submit a report to the DOH summarizing OSS program implementation progress by November 1 of even-numbered years.

The OSS program plans must include:

- a procedure for tracking the failure rates of different OSS technologies and designs, including reporting to the DOH on a regular schedule;
- a description of steps to be taken by the LHJ to fully implement the county's OSS program, including inspection of known OSS consistent with the frequency required by BOH rule;
- a description of steps to identify previously-unknown OSS, including a plan to identify at least 20 percent of the un-inventoried OSS in a county each year; and
- a demonstration of the LHJ's funding to implement the program in the current and subsequent fiscal year budgets, including detailed listings of OSS program funding sources and program expenditures by activity.

#### Public Safety Element of On-Site Sewage Systems.

A new definition is created for the term "unsafe systems." This definition includes systems that threaten public safety by creating conditions that could lead to personal injury or death due to malfunctioning or missing components. In reviewing LHJ OSS plans for approval, the DOH must ensure the plan is adequate to protect public health and safety by preventing injury and death.

Work towards identifying or correcting unsafe systems must be demonstrated in the contracts entered into between the DOH and LHJs to assist in addressing recovery areas, and must be a focus in strategies. This includes a requirement that OSS maintenance professionals report instances of unsafe systems within a marine recovery area to their LHJ.

The DOH is required to assist LHJs in the development of best practices for ensuring the safe operation of OSS. This includes best practices in the design and maintenance of risers and lids.

#### Board of Health Rules Pertaining to On-Site Sewage Systems.

The BOH may adopt additional criteria for state approval of LHJ OSS plans, but any adopted rules may not take effect until one year after adoption. New or updated BOH rules regarding septic inspection or design criteria or addressing LHJ OSS plans or programs are not required to be adopted. The BOH roles for the 12 marine counties bordering Puget Sound must require that professional OSS inspectors coordinate with and get approval from system owners prior to accessing a property to carry out an OSS inspections.

**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) Improperly functioning OSS have negative water quality impacts, and impact shellfish company operations. The approach in this bill is substantially modified from previous Legislative efforts, and is focused on getting basic information about OSSs that are not known to public health officials. Requiring counties to update their OSS plans every five years and get DOH approval will improve the robustness of local programs. Certain counties have robust OSS programs that are adequately funded and that help ensure that OSS are functioning as designed, but the majority of OSS in this state are not under sufficient management and oversight. Increased financial transparency for local government OSS programs will provide beneficial information, and should be implemented before any efforts to impose new taxes or fees to fund programs. Resource constraints are limiting the ability of local jurisdictions to implement their OSS programs.

(Opposed) On-site sewage systems are not a significant source of pollution. Public sewer systems that overflow and discharge into the sound are a much greater problem to water quality than OSS. Urban areas are attempting to ignore problems with their own wastewater systems and divert attention to rural areas. Data showing that OSS are a problem were falsified and misinterpreted. The bill has some provisions that are internally inconsistent. Current OSS rules don't allow for innovation or new treatment technologies. The treatment standards that new OSS are required to meet can't be used as a field standard of compliance, which creates uncertainty for OSS owners.

(Other) Most of the requirements in this bill are OSS management actions that locals already should be doing. Private property owners with OSS want to do what is right, but local government agencies must work cooperatively with them to implement their OSS programs. Any rules adopted by the DOH should go back to the Legislature before taking effect.

**Persons Testifying:** (In support) Representative Peterson, prime sponsor; Tim Johnson, Washington On-Site Sewage Association; Bruce Wishart, Puget Soundkeeper; and Bill Dewey, Taylor Shellfish Farms.

(Opposed) Ken Morse, Informed Citizen Network.

(Other) Cindy Alia and Glen Morgan, Citizens Alliance for Property Rights; and Jeanette McKague, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.