
Environment Committee

HB 2420

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

Sponsors: Representatives Hargrove and Sullivan.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes requirements related to state Board of Health rules addressing the repair, monitoring, and inspections of on-site sewage systems.

Hearing Date: 1/11/18

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; additional plan requirements apply only to the 12 marine counties bordering the Puget Sound.

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 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,

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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.

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.

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.

Summary of Bill:

Rules adopted by the BOH may not require, or allow a local health office (LHO) to require, that a property owner obtain a monitoring, maintenance, or inspection contract with any person in order to receive an on-site sewage system (OSS) installation permit.

Rules adopted by the state Board of Health (BOH) regarding failures of OSS must adhere to the following principles:

- excessive, unreasonable, or unnecessary obligations related to OSS system repairs must not be imposed;
- privately-owned OSS may not be subject to more stringent performance requirements than publicly-owned OSS; and
- the OSS must be allowed to be repaired using the least expensive alternative that is likely to provide comparable or better long-term treatment or dispersal outcomes.

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. This must include a notification of the property owner five business days prior to access, unless the property owner waives the five-day period;
- require property owner authorization as a prerequisite for the inspection, unless the local 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 installation permit, that an inspection easement be provided if the OSS is located on and serves a single property.

Furthermore, LHOs may not condition or deny an OSS installation permit application upon the granting of an easement for inspection or maintenance of an OSS located on and serving a single property.

Appropriation: None.

Fiscal Note: Requested on January 5, 2018.

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