

# HOUSE BILL REPORT

## HB 2420

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**As Reported by House Committee On:**  
Environment

**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:** Representatives Hargrove and Sullivan.

**Brief History:**

**Committee Activity:**

Environment: 1/11/18, 1/30/18 [DPS].

**Brief Summary of Substitute Bill**

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

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Maycumber, Assistant Ranking Minority Member; Buys, Fey, Kagi and McBride.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Taylor, 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 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.

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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.

When developing the management plans, the LHO 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.

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.

#### Shellfish Protection Districts.

The legislative authorities of counties with saltwater tidelands where shellfish are grown are authorized to establish shellfish protection districts within county boundaries in areas where nonpoint pollution threatens water quality in shellfish growing areas. Counties that establish shellfish protection districts must implement programs to address nonpoint pollution threatening water quality. Among other components, the programs may include a monitoring, inspection, and repair element to ensure OSS are adequately maintained and working properly.

#### Groundwater Management Areas.

The Department of Ecology and local governments may identify groundwater management areas, for which management programs must be developed. The criteria that are used to guide identification of groundwater management areas must include over-utilized or over-appropriated aquifer systems, aquifers that serve as a primary water supply source for public water systems, sole-source aquifers, and geographical areas where land use may result in groundwater quality contamination or degradation.

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### **Summary of Substitute Bill:**

### Monitoring, Maintenance, and Inspection Contracts.

Rules adopted by the BOH must allow a LHO to require inspection, maintenance, or monitoring contracts or service agreements only in certain narrow instances. In order for an LHO to require such a contract or service agreement as an OSS permit condition, the LHO must have local, site-specific evidence to believe that water quality or shellfish growing areas are especially at risk, and the OSS must meet one of the following three criteria:

- the OSS is located within a designated shellfish protection district, marine recovery area, groundwater management area designated due to land use impacts on groundwater quality, or other areas designated by a local board of health after public hearing and comment where OSS are determined to be significant factors contributing to public health and water quality concerns;
- the OSS has features or relies on technologies that make it difficult to monitor, maintain, or inspect, such as proprietary technologies; or
- the OSS is located on or serves multiple properties, serves three or more dwelling units, or handles at least 1,000 gallons of sewage per day.

### 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.

### **Substitute Bill Compared to Original Bill:**

Amends the original bill's requirements for BOH rules governing failures of OSS by:

- establishing a first priority for repair of failed OSS and second priority for allowing the replacement of an OSS consisting of a septic tank and drainfield with a similar system;
- striking the prohibition on unnecessary, excessive, or unreasonable OSS obligations; and
- specifying that least-expensive OSS repair alternatives must meet standards.

Amends the original bill's requirements for state BOH rules governing access for inspections of OSS by:

- eliminating the requirement that government or certified professional inspectors provide five days' notice prior to accessing a property; and
- specifying that an OSS inspection or maintenance easements may be a condition of OSS permit issuance for OSS that are located on a single property but serve multiple dwelling units.

Eliminates the blanket prohibition on inspection, monitoring, or maintenance contracts as an OSS permit condition, and instead allows for OSS contracts or service agreements to be required where the LHO has local, site-specific evidence of risk to water quality or shellfish growing areas, and one of the three following conditions are met:

- the OSS is located within a designated shellfish protection district, marine recovery area, groundwater management area designated due to land use impacts on groundwater quality, or other areas designated by a local board of health after public hearing and comment;
- the OSS has features or relies on technologies that make it difficult to monitor, maintain, or inspect, such as proprietary technologies; or
- the OSS is located on or serves multiple properties, serves three or more dwelling units, or handles at least 1,000 gallons of sewage per day.

Additionally, the substitute bill adds an intent section.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill helps homeowners who received permits to install and operate OSS, but were later told by local governments that the previously-acceptable systems are no longer good enough. The bill does not protect people with straight-line pipes that discharge sewage or other systems that do not result in wastewater treatment. Homeowners should not have to give up property rights, in the form of an easement to the government, simply because they own a septic system. At least nine local governments in Washington require monitoring contracts in order to get OSS permits, regardless of the risks or location of the OSS. The language in the bill has good intent, but is broad and could leave too much discretion to the interpretation of bureaucrats. The OSS should be allowed to be repaired using inexpensive methods, rather than requiring OSS replacement. Once a property owner is authorized by a local government to put in one type of septic system, the government should not be able to require a different type of system to be installed. Studies have demonstrated that OSS have minimal impacts on water quality, and intrusive government regulation of them is not validated. When state rules are too burdensome, they create incentives for property owners

to hide any issues with their OSS, for fear that the government will require an excessively expensive solution. The goal of this legislation is to simplify regulations by making sure people maintain their system to meet the original standards of the permits issued by local governments. Some local governments have been too aggressive at regulating OSS and have faced a backlash from rural property owners. This legislation will ensure that all local governments are reasonable and measured in applying their OSS regulations. Some requirements, like monitoring contracts, should not be broadly required across a county. Regulations requiring periodic monitoring and maintenance reorient the loyalty of OSS professionals from their OSS customers to prioritize the aims of the local governments that drive the demand for their business services.

(Opposed) The OSS are a permanent and important part of the state's wastewater infrastructure, and successfully treat wastewater when designed, installed, and operated properly. The BOH will soon begin a periodic update of its OSS rules and many of the concerns in this bill should be addressed via the rulemaking process. The broad language in the bill referencing unreasonable and excessive obligations is concerning and could spawn litigation, because it is unclear to LHOs how those criteria would be interpreted. Some elements of this bill are conceptually unobjectionable, such as the requirement that public and private OSS be treated equally and the goal of avoiding imposing unnecessary obligations. However, the bill also outlaws important tools used by LHOs to ensure that OSS are properly maintained, such as the use of monitoring contracts that are required in sensitive marine areas and for alternative OSS technologies. Professional care is sometimes needed for complex OSS. Without up-front monitoring contracts, OSS owners are often caught unaware of their obligation to properly maintain their OSS. Eliminating the authority to use the tool of monitoring contracts would require local governments in Puget Sound to revise the state-required management plans that protect shellfish and water quality. Shellfish protection districts and other local efforts to protect water quality and shellfish resources are showing measurable achievements, and the ability to address OSS where they are impacting water quality is an important component of these programs' success. Private property rights include the property rights of shellfish growers impacted by leaking OSS, in addition to the property rights of OSS owners. The ambiguous provisions in the bill could impair long-negotiated rules governing when OSS owners can be required to hook into local sewer systems.

(Other) Properly functioning and maintained OSS help protect Puget Sound. Some of the broad and vague language in the bill could impact the ability of the state and local governments to ensure that OSS in Puget Sound are operating properly and are well maintained. Failures of OSS can cause surface water pollution and impact swimming beaches, shellfish, and other performance indicators watched by the Puget Sound Partnership to measure the recovery of Puget Sound.

**Persons Testifying:** (In support) Representative Hargrove, prime sponsor; Betsy Howe, Citizens Opposed to OSS Washington; Doug Carr; Dave Tegeler; Chad Magendanz; Joe Tomlinson; Cindy Alia, Citizens Alliance for Property Rights; and Jeannette McKague, Washington Realtors.

(Opposed) Stuart Glasoe, Washington State Board of Health; John Kiess, Kitsap County Health District; Art Starry, Thurston County Health Department; Rick Porso, Washington

State Department of Health; Bruce Wishart, Puget Soundkeeper Alliance; Carl Schroeder, Association of Washington Cities; and Bill Dewey, Taylor Shellfish Farms.

(Other) Jeff Parsons, Puget Sound Partnership.

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