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SENATE BILL 5431

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State of Washington

59th Legislature

2005 Regular Session

By Senators Spanel, Rockefeller, Pridemore, Poulsen, Kohl-Welles, Doumit, Regala, Fraser, Kline and McCaslin

Read first time 01/25/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to managing on-site sewage systems in marine areas;  
2 amending RCW 70.118.010, 70.118.020, 43.20.050, 90.48.264, 90.72.030,  
3 54.16.310, 85.08.905, and 36.36.040; adding new sections to chapter  
4 70.118 RCW; and adding a new section to chapter 57.08 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.118.010 and 1977 ex.s. c 133 s 1 are each amended  
7 to read as follows:

8 (1) The legislature finds that ((over one million, two hundred  
9 thousand persons in the state are not served by sanitary sewers and  
10 that they must rely on septic tank systems.)):

11 (a) Nearly thirty percent of the state's residents live in homes  
12 served by on-site sewage systems;

13 (b) Nearly forty percent of new residences are served by on-site  
14 sewage systems;

15 (c) On-site sewage systems are intended to provide a permanent  
16 utility service; and

17 (d) The failure of large numbers of ((such)) on-site sewage systems  
18 has resulted in significant public health and environmental hazards,  
19 loss of property values, and water quality degradation.

1       (2) The legislature further finds that failure of such systems  
2       could be reduced by utilization of nonwater-carried sewage disposal  
3       systems, or other alternative methods of effluent disposal, as a  
4       correctional measure. Waste water volume diminution and disposal of  
5       most of the high bacterial waste through composting or other  
6       alternative methods of effluent disposal would result in restorative  
7       improvement or correction of existing substandard systems.

8       (3) The legislature further finds that improperly functioning on-  
9       site sewage systems in marine areas may contaminate ground water and  
10       surface water, threatening public health and the environment.  
11       Therefore, the legislature finds that in these areas enhanced on-site  
12       sewage system certification programs must be established to ensure  
13       systems are properly functioning to protect public and environmental  
14       health.

15       **Sec. 2.** RCW 70.118.020 and 1994 c 281 s 2 are each amended to read  
16       as follows:

17       ~~((As used in this chapter, the terms defined in this section shall~~  
18       ~~have the meanings indicated))~~ The definitions in this section apply  
19       throughout this chapter unless the context clearly ~~((indicates))~~  
20       requires otherwise.

21       ~~(1) ("Nonwater-carried sewage disposal devices" means any device~~  
22       ~~that stores and treats nonwater-carried human urine and feces))~~  
23       "Additive" means any commercial product intended to affect the  
24       performance or aesthetics of an on-site sewage disposal system.

25       ~~(2) "Additive manufacturer" means any person who manufactures,~~  
26       ~~formulates, blends, packages, or repackages an additive product for~~  
27       ~~sale, use, or distribution within the state.~~

28       (3) "Alternative methods of effluent disposal" means systems  
29       approved by the department of health, including at least, mound  
30       systems, alternating drain fields, anaerobic filters,  
31       evapotranspiration systems, and aerobic systems.

32       ~~((3) "Failure" means: (a) Effluent has been discharged on the~~  
33       ~~surface of the ground prior to approved treatment; or (b) effluent has~~  
34       ~~percolated to the surface of the ground; or (c) effluent has~~  
35       ~~contaminated or threatens to contaminate a ground water supply.~~

36       ~~(4) "Additive" means any commercial product intended to affect the~~  
37       ~~performance or aesthetics of an on-site sewage disposal system.~~

1       ~~(5)~~) (4) "Board" means the state board of health.

2       (5) "Chemical additive" means those additives containing acids,  
3 bases, or other chemicals deemed unsafe by the department for use in an  
4 on-site sewage disposal system.

5       (6) "Complex on-site sewage disposal system" means any on-site  
6 sewage disposal system that is not a conventional system.

7       (7) "Conventional on-site sewage disposal system" means an on-site  
8 sewage disposal system that uses only gravity for operation.

9       (8) "Department" means the department of health.

10       ~~((6))~~ (9) "Enhanced on-site sewage system certification program"  
11 means the certification program in section 4 of this act for owners and  
12 operators of on-site sewage disposal systems.

13       (10) "Failure" means effluent has: (a) Been discharged on the  
14 surface of the ground prior to approved treatment; (b) percolated to  
15 the surface of the ground; or (c) contaminated or threatens to  
16 contaminate a ground water supply.

17       (11) "Marine area of special concern" means a designation by the  
18 department of ecology or the local board of health requiring the  
19 establishment of an enhanced on-site sewage system certification  
20 program.

21       (12) "Nonwater-carried sewage disposal devices" means any device  
22 that stores and treats nonwater-carried human urine and feces.

23       (13) "On-site sewage disposal system" means any system of piping,  
24 treatment devices, or other facilities that convey, store, treat, or  
25 dispose of sewage on the property where it originates or on nearby  
26 property under the control of the user where the system is not  
27 connected to a public sewer system. For purposes of this chapter, an  
28 on-site sewage disposal system does not include indoor plumbing and  
29 associated fixtures.

30       ~~((7) "Chemical additive" means those additives containing acids,  
31 bases, or other chemicals deemed unsafe by the department for use in an  
32 on-site sewage disposal system.~~

33       ~~(8) "Additive manufacturer" means any person who manufactures,  
34 formulates, blends, packages, or repackages an additive product for  
35 sale, use, or distribution within the state.))~~

36       (14) "Operational certificate" means a certificate demonstrating  
37 compliance with an enhanced on-site sewage system certification  
38 program.

1        NEW SECTION.    **Sec. 3.** A new section is added to chapter 70.118 RCW  
2 to read as follows:

3        (1) The department of ecology shall designate a marine area of  
4 special concern in counties with shorelines adjacent to Puget Sound in  
5 areas where concentrations of on-site sewage disposal systems are a  
6 significant factor contributing to public health and environmental  
7 concerns and:

8            (a) Shellfish growing areas have been downgraded by the department  
9 of health under chapter 69.30 RCW;

10          (b) State waters are listed under 33 U.S.C. Sec. 1313(d) (Sec.  
11 303(d) of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.); or

12          (c) Marine waters are experiencing low dissolved oxygen levels  
13 below three parts per million.

14        (2) In accordance with the administrative procedure act, chapter  
15 34.05 RCW, the department shall ensure an opportunity for consultation,  
16 review, and comment before designating a marine area of special  
17 concern.

18        (3) The department of ecology shall notify the local board of  
19 health regarding the marine area of special concern designation and the  
20 requirement for the development of an enhanced on-site sewage system  
21 certification program. The notification must include:

22            (a) A description of the marine area of special concern; and

23            (b) The information used by the department of ecology for making  
24 the determination.

25        (4) In addition to the designation process in subsection (1) of  
26 this section, a local board of health may designate a marine area of  
27 special concern in marine areas where it has determined an enhanced on-  
28 site sewage system certification program is necessary to protect public  
29 health and the environment.

30        NEW SECTION.    **Sec. 4.** A new section is added to chapter 70.118 RCW  
31 to read as follows:

32        The local board of health with jurisdiction over the area shall  
33 submit an enhanced on-site sewage system certification program to the  
34 department within eighteen months of designation of a marine area of  
35 special concern within the county. The program must include the  
36 minimum requirements of the enhanced on-site sewage system  
37 certification program including, but not limited to:

1 (1) Designation of a geographic area with sufficient coverage to  
2 correct the problems contributing to the marine area of special concern  
3 designation. The local board of health is encouraged to use existing  
4 local authorities to implement the enhanced on-site sewage system  
5 certification program including shellfish protection districts under  
6 chapter 90.72 RCW, public utility districts under chapter 54.16 RCW,  
7 water-sewer districts under chapter 57.08 RCW, aquifer protection  
8 districts under chapter 36.36 RCW, or sewerage improvement districts  
9 under chapter 85.08 RCW;

10 (2) Requirements for owners or operators of on-site sewage disposal  
11 systems to obtain an operational certificate;

12 (3) Any additional requirements for on-site sewage disposal system  
13 operation, maintenance, and monitoring that are commensurate with the  
14 risks posed by on-site sewage disposal systems within the geographic  
15 area;

16 (4) A data base of on-site sewage disposal systems including the  
17 status of operational certificates; and

18 (5) An education and awareness program to assist property owners in  
19 complying with the enhanced on-site sewage system certification  
20 program.

21 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.118 RCW  
22 to read as follows:

23 The local board of health with jurisdiction over the area shall  
24 conduct quality assurance of the enhanced on-site sewage system  
25 certification program including:

26 (1) Inspection of at least ten percent of certificated on-site  
27 sewage disposal systems every three years to determine if the systems  
28 are properly functioning and in compliance with this chapter and RCW  
29 43.20.050; and

30 (2) Follow-up inspections of all new on-site sewage disposal  
31 systems within one year of installation to ensure that the system is  
32 properly functioning and to provide educational materials to the owner  
33 or operator of the system.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.118 RCW  
35 to read as follows:

36 The department shall review enhanced on-site sewage system

1 certification programs submitted by a local board of health. The  
2 department shall determine if the program includes all of the required  
3 elements in section 4 of this act. The department may either approve  
4 the program or recommend changes. If the department does not approve  
5 the program, the local board of health must amend and resubmit the  
6 program to the department for approval. If the local board of health  
7 does not establish an approved program within twenty-four months of  
8 designation of a marine area of special concern, the department shall  
9 develop and implement an enhanced on-site sewage system certification  
10 program to protect public health and the environment.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.118 RCW  
12 to read as follows:

13 (1)(a) If the department or a local board of health establishes an  
14 enhanced on-site sewage system certification program, no person may  
15 operate an on-site sewage disposal system without first obtaining an  
16 operational certificate. An operational certificate may only be issued  
17 after successful examination of the on-site sewage disposal system by  
18 an on-site sewage disposal system operations and maintenance specialist  
19 approved by the local board of health. An operational certificate is  
20 valid for three years for a conventional on-site sewage disposal system  
21 and one year for a complex on-site sewage disposal system.

22 (b) For the purposes of this section, "successful examination"  
23 means the operation and maintenance specialist approved by the local  
24 board of health has made a determination that the on-site sewage  
25 disposal system is functioning as designed, and any corrective measures  
26 have been identified and corrected.

27 (c) Inspections must certify that the system functions properly.  
28 The inspection must include documentation of the current condition of  
29 the on-site sewage disposal system, maintenance needs, and compliance  
30 with this chapter and RCW 43.20.050.

31 (2) The results of the on-site sewage disposal system inspection  
32 must be documented in an inspection report and be provided to the owner  
33 or operator of the system and the local health department. The  
34 inspection report must summarize the results of the inspection, list  
35 any required corrective actions, and provide recommendations for  
36 improved maintenance of the system in order to ensure compliance with  
37 this chapter and RCW 43.20.050.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 70.118 RCW  
2 to read as follows:

3        In areas with shorelines adjacent to Puget Sound where an enhanced  
4 on-site sewage system certification program is not required, the owner  
5 of an on-site sewage disposal system is responsible for operating,  
6 monitoring, and maintaining the system to minimize the risk of failure.  
7 In order to accomplish this, the owner shall ensure a complete  
8 evaluation of the system's components to determine functionality,  
9 maintenance needs, and compliance with regulations and permits as  
10 follows:

11        (1) At least once every three years for a conventional on-site  
12 sewage disposal system; or

13        (2) Annually for a complex on-site sewage disposal system.

14        **Sec. 9.**    RCW 43.20.050 and 1993 c 492 s 489 are each amended to  
15 read as follows:

16        (1) The state board of health shall provide a forum for the  
17 development of public health policy in Washington state. It is  
18 authorized to recommend to the secretary means for obtaining  
19 appropriate citizen and professional involvement in all public health  
20 policy formulation and other matters related to the powers and duties  
21 of the department. It is further empowered to hold hearings and  
22 explore ways to improve the health status of the citizenry.

23        (a) At least every five years, the state board shall convene  
24 regional forums to gather citizen input on public health issues.

25        (b) Every two years, in coordination with the development of the  
26 state biennial budget, the state board shall prepare the state public  
27 health report that outlines the health priorities of the ensuing  
28 biennium. The report shall:

29        (i) Consider the citizen input gathered at the forums;

30        (ii) Be developed with the assistance of local health departments;

31        (iii) Be based on the best available information collected and  
32 reviewed according to RCW 43.70.050 (~~and recommendations from the~~  
33 ~~council~~);

34        (iv) Be developed with the input of state health care agencies. At  
35 least the following directors of state agencies shall provide timely  
36 recommendations to the state board on suggested health priorities for  
37 the ensuing biennium: The secretary of social and health services, the

1 health care authority administrator, the insurance commissioner, the  
2 superintendent of public instruction, the director of labor and  
3 industries, the director of ecology, and the director of agriculture;

4 (v) Be used by state health care agency administrators in preparing  
5 proposed agency budgets and executive request legislation;

6 (vi) Be submitted by the state board to the governor by January 1st  
7 of each even-numbered year for adoption by the governor. The governor,  
8 no later than March 1st of that year, shall approve, modify, or  
9 disapprove the state public health report.

10 (c) In fulfilling its responsibilities under this subsection, the  
11 state board may create ad hoc committees or other such committees of  
12 limited duration as necessary.

13 (2) In order to protect public health, the state board of health  
14 shall:

15 (a) Adopt rules necessary to assure safe and reliable public  
16 drinking water and to protect the public health. Such rules shall  
17 establish requirements regarding:

18 (i) The design and construction of public water system facilities,  
19 including proper sizing of pipes and storage for the number and type of  
20 customers;

21 (ii) Drinking water quality standards, monitoring requirements, and  
22 laboratory certification requirements;

23 (iii) Public water system management and reporting requirements;

24 (iv) Public water system planning and emergency response  
25 requirements;

26 (v) Public water system operation and maintenance requirements;

27 (vi) Water quality, reliability, and management of existing but  
28 inadequate public water systems; and

29 (vii) Quality standards for the source or supply, or both source  
30 and supply, of water for bottled water plants.

31 (b) Adopt rules and standards for prevention, control, and  
32 abatement of health hazards and nuisances related to the disposal of  
33 wastes, solid and liquid, including but not limited to sewage, garbage,  
34 refuse, and other environmental contaminants; adopt standards and  
35 procedures governing the design, construction, and operation of sewage,  
36 garbage, refuse and other solid waste collection, treatment, and  
37 disposal facilities;



1 (c) Adopt rules controlling public health related to environmental  
2 conditions including but not limited to heating, lighting, ventilation,  
3 sanitary facilities, cleanliness and space in all types of public  
4 facilities including but not limited to food service establishments,  
5 schools, institutions, recreational facilities and transient  
6 accommodations and in places of work;

7 (d) Adopt rules for the imposition and use of isolation and  
8 quarantine;

9 (e) Adopt rules for the prevention and control of infectious and  
10 noninfectious diseases, including food and vector borne illness, and  
11 rules governing the receipt and conveyance of remains of deceased  
12 persons, and such other sanitary matters as admit of and may best be  
13 controlled by universal rule; and

14 (f) Adopt rules for accessing existing data bases for the purposes  
15 of performing health related research.

16 (3) The state board may delegate any of its rule-adopting authority  
17 to the secretary and rescind such delegated authority.

18 (4) All local boards of health, health authorities and officials,  
19 officers of state institutions, police officers, sheriffs, constables,  
20 and all other officers and employees of the state, or any county, city,  
21 or township thereof, shall enforce all rules adopted by the state board  
22 of health. In the event of failure or refusal on the part of any  
23 member of such boards or any other official or person mentioned in this  
24 section to so act, he or she shall be subject to a fine of not less  
25 than fifty dollars, upon first conviction, and not less than one  
26 hundred dollars upon second conviction.

27 (5) The state board may advise the secretary on health policy  
28 issues pertaining to the department of health and the state.

29 (6) In addition to the powers and duties to adopt rules for on-site  
30 sewage systems as provided in subsection (2) of this section, the state  
31 board of health shall adopt rules to address environmental impacts  
32 associated with low dissolved oxygen in marine waters.

33 **Sec. 10.** RCW 90.48.264 and 1988 c 220 s 2 are each amended to read  
34 as follows:

35 In implementing this chapter and in participating in programs under  
36 the federal clean water act, the department (~~(may)~~) shall consult with  
37 the department of (~~(social and)~~) health (~~(services)~~) and the board of

1 health concerning standards for repair of existing, failing on-site  
2 sewage disposal systems that are adjacent to marine waters. By  
3 (~~January 1, 1989~~) July 1, 2006, the (~~department of social and~~)  
4 board of health (~~(services)~~) shall propose rules for (~~adoption by the~~  
5 ~~state board of health~~) identifying the standards for repair of  
6 existing, failing on-site sewage disposal systems at single-family  
7 residences that were legally occupied prior to June 9, 1988, and for  
8 implementing the enhanced on-site sewage system certification program  
9 in section 3 of this act that are adjacent to marine waters. The rules  
10 may specify the design, operation, and maintenance standards for such  
11 repaired systems and the requirements for the enhanced on-site sewage  
12 system certification program in section 3 of this act so as to ensure  
13 protection of the public health, attainment of state water quality  
14 standards, and the protection of shellfish and other public resources.  
15 The rules shall also provide that any proposed discharge to marine  
16 water shall be considered only if on-site sewage disposal systems are  
17 not feasible and that such discharges shall meet the requirements of  
18 this chapter and department of ecology (~~(regulations)~~) rules. The  
19 state board of health shall adopt such proposed rules unless the board  
20 finds modification or rejection of them necessary to protect the public  
21 health.

22 **Sec. 11.** RCW 90.72.030 and 1992 c 100 s 2 are each amended to read  
23 as follows:

24 The legislative authority of each county having shellfish tidelands  
25 within its boundaries is authorized to establish a shellfish protection  
26 district to include areas in which nonpoint pollution threatens the  
27 water quality upon which the continuation or restoration of shellfish  
28 farming or harvesting is dependent. The legislative authority shall  
29 constitute the governing body of the district and shall adopt a  
30 shellfish protection program to be effective within the district. The  
31 legislative authority may appoint a local advisory council to advise  
32 the legislative authority in preparation and implementation of  
33 shellfish protection programs. This program shall include any elements  
34 deemed appropriate to deal with the nonpoint pollution threatening  
35 water quality, including, but not limited to, requiring the elimination  
36 or decrease of contaminants in storm water runoff, establishing  
37 monitoring, inspection, and repair elements to ensure that on-site

1 sewage systems are adequately maintained and working properly, assuring  
2 that animal grazing and manure management practices are consistent with  
3 best management practices, and establishing educational and public  
4 involvement programs to inform citizens on the causes of the  
5 threatening nonpoint pollution and what they can do to decrease the  
6 amount of such pollution. An element may be omitted where another  
7 program is effectively addressing those sources of nonpoint water  
8 pollution. Within the limits of RCW 90.72.040 and 90.72.070, the  
9 county legislative authority shall have full jurisdiction and authority  
10 to manage, regulate, and control its programs and to fix, alter,  
11 regulate, and control the fees for services provided and charges or  
12 rates as provided under those programs. Programs established under  
13 this chapter((~~7~~)) may, but are not required to, be part of a system of  
14 sewerage as defined in RCW 36.94.010, or include an enhanced on-site  
15 sewage system certification program as established in section 3 of this  
16 act.

17 **Sec. 12.** RCW 54.16.310 and 1990 c 107 s 1 are each amended to read  
18 as follows:

19 A public utility district as authorized by a county board of health  
20 may implement an enhanced on-site sewage system certification program  
21 as established in section 3 of this act, or may perform operation and  
22 maintenance, including inspections, of on-site sewage disposal  
23 facilities, alternate sewage disposal facilities, approved septic tanks  
24 or approved septic tank systems, other facilities and systems for the  
25 collection, interception, treatment, and disposal of wastewater, and  
26 for the control and protection, preservation, and rehabilitation of  
27 surface and underground waters. Those costs associated with the  
28 maintenance of private on-site sewage systems may be charged by the  
29 public utility district to the system owner.

30 NEW SECTION. **Sec. 13.** A new section is added to chapter 57.08 RCW  
31 to read as follows:

32 In addition to the powers in RCW 57.08.005, a district may  
33 implement an enhanced on-site sewage system certification program as  
34 created in section 3 of this act.

1       **Sec. 14.** RCW 85.08.905 and 1985 c 396 s 30 are each amended to  
2 read as follows:

3       Sewerage improvement districts may investigate, plan, construct,  
4 acquire, repair, maintain, and operate improvements, works, projects,  
5 and facilities to collect, treat, and dispose of sanitary, industrial,  
6 and other sewage. Such facilities include on-site and off-site  
7 sewerage facilities, including approved septic tanks or septic tank  
8 systems. Sewerage improvement districts may implement enhanced on-site  
9 sewage system certification programs as established in section 3 of  
10 this act.

11       **Sec. 15.** RCW 36.36.040 and 1991 c 151 s 2 are each amended to read  
12 as follows:

13       Aquifer protection areas may impose fees to fund:

14       (1) The preparation of a comprehensive plan to protect, preserve,  
15 and rehabilitate subterranean water, including ground water management  
16 programs adopted under chapter 90.44 RCW. This plan may be prepared as  
17 a portion of a county sewerage and/or water general plan pursuant to  
18 RCW 36.94.030;

19       (2) The construction of facilities for: (a) The removal of water-  
20 borne pollution; (b) water quality improvement; (c) sanitary sewage  
21 collection, disposal, and treatment; (d) storm water or surface water  
22 drainage collection, disposal, and treatment; and (e) the construction  
23 of public water systems;

24       (3) The proportionate reduction of special assessments imposed by  
25 a county, city, town, or special district in the aquifer protection  
26 area for any of the facilities described in subsection (2) of this  
27 section;

28       (4) The costs of monitoring and inspecting on-site sewage disposal  
29 systems or community sewage disposal systems for compliance with  
30 applicable standards and rules, and for enforcing compliance with these  
31 applicable standards and rules in aquifer protection areas created  
32 after June 9, 1988; (~~and~~)

33       (5) The implementation of an enhanced on-site sewage system  
34 certification program as established in section 3 of this act; and

35       (6) The costs of: (a) Monitoring the quality and quantity of  
36 subterranean water and analyzing data that is collected; (b) ongoing  
37 implementation of the comprehensive plan developed under subsection (1)

1 of this section; (c) enforcing compliance with standards and rules  
2 relating to the quality and quantity of subterranean waters; and (d)  
3 public education relating to protecting, preserving, and enhancing  
4 subterranean waters.

--- END ---