
HOUSE BILL 2922

State of Washington

60th Legislature

2008 Regular Session

By Representatives Ericksen and Linville

Read first time 01/17/08. Referred to Committee on Select Committee on Environmental Health.

1 AN ACT Relating to reducing the regulatory authority of the
2 department of health and state board of health to permit small on-site
3 sewage disposal systems; amending RCW 43.20.050, 70.05.072, 70.05.074,
4 70.05.077, 70.118.020, and 70.118.030; adding a new section to chapter
5 70.118A RCW; and repealing RCW 70.118.130.

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

7 **Sec. 1.** RCW 43.20.050 and 2007 c 343 s 11 are each amended to read
8 as follows:

9 (1) The state board of health shall provide a forum for the
10 development of public health policy in Washington state. It is
11 authorized to recommend to the secretary means for obtaining
12 appropriate citizen and professional involvement in all public health
13 policy formulation and other matters related to the powers and duties
14 of the department. It is further empowered to hold hearings and
15 explore ways to improve the health status of the citizenry.

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

18 (b) Every two years, in coordination with the development of the

1 state biennial budget, the state board shall prepare the state public
2 health report that outlines the health priorities of the ensuing
3 biennium. The report shall:

- 4 (i) Consider the citizen input gathered at the forums;
- 5 (ii) Be developed with the assistance of local health departments;
- 6 (iii) Be based on the best available information collected and
7 reviewed according to RCW 43.70.050 (~~and recommendations from the~~
8 ~~council~~);

9 (iv) Be developed with the input of state health care agencies. At
10 least the following directors of state agencies shall provide timely
11 recommendations to the state board on suggested health priorities for
12 the ensuing biennium: The secretary of social and health services, the
13 health care authority administrator, the insurance commissioner, the
14 superintendent of public instruction, the director of labor and
15 industries, the director of ecology, and the director of agriculture;

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

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

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

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

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

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

33 (ii) Drinking water quality standards, monitoring requirements, and
34 laboratory certification requirements;

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

36 (iv) Public water system planning and emergency response
37 requirements;

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

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

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

5 (b) Adopt rules and standards for prevention, control, and
6 abatement of health hazards and nuisances related to the disposal of
7 wastes, solid and liquid, including but not limited to sewage, garbage,
8 refuse, and other environmental contaminants; adopt standards and
9 procedures governing the design, construction, and operation of sewage,
10 garbage, refuse and other solid waste collection, treatment, and
11 disposal facilities;

12 (c) Adopt rules controlling public health related to environmental
13 conditions including but not limited to heating, lighting, ventilation,
14 sanitary facilities, cleanliness and space in all types of public
15 facilities including but not limited to food service establishments,
16 schools, institutions, recreational facilities and transient
17 accommodations and in places of work;

18 (d) Adopt rules for the imposition and use of isolation and
19 quarantine;

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

25 (f) Adopt rules for accessing existing databases for the purposes
26 of performing health related research.

27 (3) The state board shall adopt rules that are advisory only for
28 the design, construction, installation, operation, and maintenance of
29 (~~these~~) on-site sewage systems with design flows (~~of~~) equal to or
30 less than three thousand five hundred gallons per day. The department
31 shall provide technical assistance to local health jurisdictions
32 concerning regulation of these on-site sewage systems.

33 (4) The state board may delegate any of its rule-adopting authority
34 to the secretary and rescind such delegated authority.

35 (5) All local boards of health, health authorities and officials,
36 officers of state institutions, police officers, sheriffs, constables,
37 and all other officers and employees of the state, or any county, city,
38 or township thereof, shall enforce all rules adopted by the state board

1 of health. In the event of failure or refusal on the part of any
2 member of such boards or any other official or person mentioned in this
3 section to so act, he or she shall be subject to a fine of not less
4 than fifty dollars, upon first conviction, and not less than one
5 hundred dollars upon second conviction.

6 (6) The state board may advise the secretary on health policy
7 issues pertaining to the department of health and the state.

8 **Sec. 2.** RCW 70.05.072 and 1995 c 263 s 1 are each amended to read
9 as follows:

10 The local health officer may grant a waiver from specific
11 requirements adopted by the ((state)) local board of health for on-site
12 sewage systems if:

13 (1) The on-site sewage system for which a waiver is requested is
14 for sewage flows ((under)) equal to or less than three thousand five
15 hundred gallons per day;

16 (2) The waiver request is evaluated by the local health officer on
17 an individual, site-by-site basis; and

18 (3) The local health officer determines that the waiver is
19 consistent with the standards in, and the intent of, the ((state))
20 local board of health rules((; and

21 ~~(4) The local health officer submits quarterly reports to the
22 department regarding any waivers approved or denied.~~

23 ~~Based on review of the quarterly reports, if the department finds
24 that the waivers previously granted have not been consistent with the
25 standards in, and intent of, the state board of health rules, the
26 department shall provide technical assistance to the local health
27 officer to correct the inconsistency, and may notify the local and
28 state boards of health of the department's concerns.~~

29 ~~If upon further review of the quarterly reports, the department
30 finds that the inconsistency between the waivers granted and the state
31 board of health standards has not been corrected, the department may
32 suspend the authority of the local health officer to grant waivers
33 under this section until such inconsistencies have been corrected)).~~

34 **Sec. 3.** RCW 70.05.074 and 1997 c 447 s 2 are each amended to read
35 as follows:

36 (1) The local health officer must respond to the applicant for an

1 on-site sewage system permit within thirty days after receiving a fully
2 completed application. The local health officer must respond that the
3 application is either approved, denied, or pending. All conditions of
4 compliance for the permit must be included on or physically attached to
5 the permit.

6 (2) If the local health officer denies an application to install an
7 on-site sewage system, the denial must be for cause and based upon
8 public health and environmental protection concerns, including concerns
9 regarding the ability to operate and maintain the system, or conflicts
10 with other existing laws, regulations, or ordinances. The local health
11 officer must provide the applicant with a written justification for the
12 denial, along with an explanation of the procedure for appeal.

13 (3) If the local health officer identifies the application as
14 pending and subject to review beyond thirty days, the local health
15 officer must provide the applicant with a written justification that
16 the site-specific conditions or circumstances necessitate a longer time
17 period for a decision on the application. The local health officer
18 must include any specific information necessary to make a decision and
19 the estimated time required for a decision to be made.

20 (4) A local health officer may not limit the number of alternative
21 sewage systems within his or her jurisdiction without cause. Any such
22 limitation must be based upon public health and environmental
23 protection concerns, including concerns regarding the ability to
24 operate and maintain the system, or conflicts with other existing laws,
25 regulations, or ordinances. If such a limitation is established, the
26 local health officer must justify the limitation in writing, with
27 specific reasons, and must provide an explanation of the procedure for
28 appealing the limitation.

29 **Sec. 4.** RCW 70.05.077 and 1998 c 34 s 3 are each amended to read
30 as follows:

31 (1) The department of health, in consultation and cooperation with
32 local environmental health officers, shall develop a one-day course to
33 train local environmental health officers, health officers, and
34 environmental health specialists and technicians to address the
35 application of the waiver authority granted under RCW 70.05.072 as well
36 as other existing statutory or regulatory flexibility for siting on-
37 site sewage systems.

1 (2) The training course shall include the following topics:

2 (a) The statutory authority to grant waivers (~~((from the state on-~~
3 ~~site sewage system rules))~~ by the local health officer;

4 (b) The regulatory framework for the application of on-site sewage
5 treatment and disposal technologies, with an emphasis on the
6 differences between rules, standards, and guidance. The course shall
7 include instruction on interpreting the intent of a rule rather than
8 the strict reading of the language of a rule, and also discuss the
9 liability assumed by a unit of local government when local rules,
10 policies, or practices deviate from the state administrative code;

11 (c) The application of site evaluation and assessment methods to
12 match the particular site and development plans with the on-site sewage
13 treatment and disposal technology suitable to protect public health
14 (~~((to at least the level provided by state rule))~~); and

15 (d) Instruction in the concept and application of mitigation
16 waivers.

17 (3) The training course shall be made available to all local health
18 departments and districts in various locations in the state without
19 fee. Updated guidance documents and materials shall be provided to all
20 participants, including examples of the types of waivers and processes
21 that other jurisdictions in the region have granted and used. The
22 first training conducted under this section shall take place by June
23 30, 1999.

24 **Sec. 5.** RCW 70.118.020 and 1994 c 281 s 2 are each amended to read
25 as follows:

26 (~~(As used in this chapter,)~~) The (~~(terms defined)~~) definitions in
27 this section (~~(shall have the meanings indicated)~~) apply throughout
28 this chapter unless the context clearly (~~(indicates)~~) requires
29 otherwise.

30 (1) "Nonwater-carried sewage disposal devices" means any device
31 that stores and treats nonwater-carried human urine and feces.

32 (2) "Alternative methods of effluent disposal" means systems
33 approved by the department of health or local boards of health,
34 including at least, mound systems, alternating drainfields, anaerobic
35 filters, evapotranspiration systems, and aerobic systems.

36 (3) "Failure" means: (a) Effluent has been discharged on the

1 surface of the ground prior to approved treatment; or (b) effluent has
2 percolated to the surface of the ground; or (c) effluent has
3 contaminated or threatens to contaminate a groundwater supply.

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

6 (5) "Department" means the department of health.

7 (6) "On-site sewage disposal system" means any system of piping,
8 treatment devices, or other facilities that convey, store, treat, or
9 dispose of sewage on the property where it originates or on nearby
10 property under the control of the user where the system is not
11 connected to a public sewer system. For purposes of this chapter, an
12 on-site sewage disposal system does not include indoor plumbing and
13 associated fixtures.

14 (7) "Chemical additive" means those additives containing acids,
15 bases, or other chemicals deemed unsafe by the department or local
16 boards of health for use in an on-site sewage disposal system.

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

20 (9) "Small on-site sewage disposal system" means an on-site sewage
21 disposal system with design flows of equal to or less than three
22 thousand five hundred gallons per day.

23 **Sec. 6.** RCW 70.118.030 and 1998 c 152 s 1 are each amended to read
24 as follows:

25 (1) Local boards of health shall adopt regulations concerning on-
26 site sewage disposal systems, shall identify failing septic tank
27 drainfield systems in the normal manner, and will use reasonable effort
28 to determine new failures. The local health officer, environmental
29 health director, or equivalent officer may apply for an administrative
30 search warrant to a court official authorized to issue a criminal
31 search warrant. The warrant may only be applied for after the local
32 health officer or the health officer's designee has requested
33 inspection of the person's property under the specific administrative
34 plan required in this section, and the person has refused the health
35 officer or the health officer's designee access to the person's
36 property. Timely notice must be given to any affected person that a
37 warrant is being requested and that the person may be present at any

1 court proceeding to consider the requested search warrant. The court
2 official may issue the warrant upon probable cause. A request for a
3 search warrant must show (~~{that}~~) that the inspection, examination,
4 test, or sampling is in response to pollution in commercial or
5 recreational shellfish harvesting areas or pollution in fresh water.
6 A specific administrative plan must be developed expressly in response
7 to the pollution. The local health officer, environmental health
8 director, or equivalent officer shall submit the plan to the court as
9 part of the justification for the warrant, along with specific evidence
10 showing that it is reasonable to believe pollution is coming from the
11 septic system on the property to be accessed for inspection. The plan
12 must include each of the following elements:

- 13 (a) The overall goal of the inspection;
 - 14 (b) The location and identification by address of the properties
15 being authorized for inspection;
 - 16 (c) Requirements for giving the person owning the property and the
17 person occupying the property if it is someone other than the owner,
18 notice of the plan, its provisions, and times of any inspections;
 - 19 (d) The survey procedures to be used in the inspection;
 - 20 (e) The criteria that would be used to define an on-site sewage
21 system failure; and
 - 22 (f) The follow-up actions that would be pursued once an on-site
23 sewage system failure has been identified and confirmed.
- 24 (2) Discretionary judgment will be made in implementing corrections
25 by specifying nonwater-carried sewage disposal devices or other
26 alternative methods of treatment and effluent disposal as a measure of
27 ameliorating existing substandard conditions. Local regulations shall
28 be consistent with the intent and purposes stated in this section.

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

31 A local health officer has discretionary authority to make a
32 determination to not fulfill the requirements under this chapter. A
33 local health officer shall consult with the local board of health
34 before making such a determination. A local health officer shall
35 report a determination to not fulfill the requirements of this chapter
36 to the department.

1 NEW SECTION. **Sec. 8.** RCW 70.118.130 (Civil penalties) and 2007 c
2 343 s 9 are each repealed.

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