H-3179.2

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**HOUSE BILL 2527**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Peterson, Goodman, and Fitzgibbon

AN ACT Relating to ensuring the ongoing viability of safe on-site sewage systems as a component of statewide sewage management through the implementation of on-site program management plans; amending RCW 70.05.190, 70.118A.030, 70.118A.070, 70.118A.020, 70.118A.080, 70.118A.050, 70.118A.060, 90.71.350, and 90.71.340; adding a new section to chapter 70.118A RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that there are an estimated six hundred thousand on-site sewage systems in the Puget Sound area alone. These systems are a critical part of the state's wastewater treatment infrastructure.

(2) The legislature further finds that on-site sewage systems are an effective method of treating wastewater, but need appropriate operation and maintenance to adequately treat wastewater and operate in a safe manner. Failing systems not only contribute to the pollution of Puget Sound and other regional waters, but they can also pose a threat to human health and the personal safety of families relying on the systems for sewage treatment. Local health officers rely on the information developed through accurate, up-to-date on-site program management plans to ensure that on-site systems are properly maintained and to ensure the identification and timely repair of failing systems.

(3) The legislature further finds that the oversight, management, and enforcement of operation and maintenance requirements for on-site sewage systems is a challenging and expensive responsibility for local health jurisdictions. State laws and rules requiring local health jurisdictions to develop and implement on-site program management plans that ensure all on-site sewage systems are appropriately operated, maintained, and repaired are expensive undertakings and, as such, the efforts of local health jurisdictions to successfully comply with these state laws and rules, and to forward the restoration and protection of Puget Sound, are greatly benefited by legislative investment.

(4) The legislature further finds that homeowners ultimately bear the cost of repairing and replacing on-site sewage systems when they reach the end of their useful and safe life. This can be a great expense to a homeowner and the cost can discourage proper system management. An accessible, unified, self-sustaining low-interest loan program to help owners address failing systems would benefit the entire region, support homeowners that rely on on-site sewage systems, ensure the personal safety of the families relying on on-site sewage systems, and help ensure the continued use of on-site sewage systems as a component of statewide sewage management.

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

(1) The department and any interested counties, in partnership with the department of ecology, may capitalize and administer a sustainable unified low-interest loan program to assist homeowners with the repair and replacement of on-site sewage systems and to ensure the full implementation of a county's on-site program management plan and the preservation of public safety in the participating county.

(2) The department, interested counties, and the department of ecology may utilize any appropriate funding source for the implementation of the low-interest loan program and must mutually develop the administration of the program in the manner that is deemed the most efficient, which may include administrating the program through the department of ecology's water quality financial assistance program.

(3) For counties that are required to determine marine recovery areas under RCW 70.118A.040, the low-interest loan program created under this section may only be offered if the county develops, funds, and fully implements an on-site program management plan under RCW 70.118A.030 that has received approval from the department under RCW 70.118A.070.

**Sec.**  RCW 70.05.190 and 2012 c 175 s 1 are each amended to read as follows:

(1) ((~~A~~)) Except as provided in this section, the local board of health in the twelve counties bordering Puget Sound may collect from the property owner an annual charge or a rate for each on-site sewage system located in the basin of the Puget Sound, as that term is defined in RCW 90.71.010, for the purpose of implementing ((~~an~~)) the on-site ((~~sewage~~)) program management plan ((~~may:~~

~~(a) Impose and collect reasonable rates or charges in an amount sufficient to pay for the actual costs of administration and operation of the on-site sewage program management plan; and~~

~~(b)~~)) required under chapter 70.118A RCW and ensuring the preservation of public health and safety as it relates to the operation of on-site sewage systems.

(2) A local board of health may collect the charge or rate imposed under this section in areas of a county located outside the Puget Sound basin if a portion of the county is within the Puget Sound basin.

(3) A local board of health may contract with the county treasurer to collect the ((~~rates or charges imposed~~)) charge or rate authorized under this section in accordance with RCW 84.56.035.

((~~(2)~~)) (4) A local board of health may not collect the charge or rate authorized under this section from a person who is exempt from paying property taxes under RCW 84.36.381.

(5) In executing the provisions in subsection (1) of this section, a local board of health does not have the authority to impose a lien on real property for failure to pay ((~~rates and charges imposed~~)) the charge and rates authorized by this section.

((~~(3) Nothing in this section provides a local board of health with the ability to impose and collect rates and charges related to the implementation of an on-site sewage program management plan beyond those powers currently designated under RCW 70.05.060(7).~~))

(6) County legislative authorities may use multiple revenue sources to finance activities and services that address overlapping nonpoint pollution needs, such as water quality monitoring or pollution identification and correction, and any overlapping public safety needs as they relate to the operation of on-site sewage systems.

**Sec.**  RCW 70.118A.030 and 2006 c 18 s 3 are each amended to read as follows:

((~~By July 1, 2007,~~)) (1) The local health officers of health jurisdictions in the twelve counties bordering Puget Sound shall develop a written on-site program management plan to provide guidance to the local health jurisdiction.

(2)(a) Except as otherwise provided in (b) of this subsection, local health officers must update on-site program management plans and submit the updated plans to the department for review and approval under RCW 70.118A.070 at least once every five years to implement local priorities and program requirements and standards identified in this chapter and any rules adopted by the board.

(b) The board may determine a schedule for the update and review of on-site program management plans that differs from the five-year schedule provided in (a) of this subsection.

**Sec.**  RCW 70.118A.070 and 2006 c 18 s 7 are each amended to read as follows:

(1)(a) The on-site program management plans of local health jurisdictions required under RCW 70.118A.030 must be submitted to the department ((~~by July 1, 2007,~~)) and be reviewed for approval to determine if they ((~~contain all necessary elements. The department shall provide in writing to the local board of health its review of the completeness of the plan~~)) are adequate to protect public safety and fulfill the minimum on-site program management plan requirements and standards established by the board by rule.

(b) The board may adopt additional criteria by rule for approving on-site program management plans((~~.~~)); however, any additional criteria may not take effect until one year after it is adopted.

(2) In reviewing the on-site ((~~strategy component of the~~)) program management plan, the department shall ensure that:

(a) All required elements, including designation of any marine recovery area and the preservation of public safety in the operation of systems, have been addressed; and

(b) The submitting local health jurisdiction has presented a sufficient, reliable, and reasonable strategy to fund the implementation of the on-site program management plan that is considered in the overall context of a county's public health program and does not diminish other local public health priorities.

(3) Within ((~~thirty~~)) sixty days of receiving an on-site ((~~strategy~~)) program management plan, the department shall either approve the on-site ((~~strategy~~)) program management plan or provide in writing the reasons for not approving the ((~~strategy~~)) on-site program management plan and recommend changes. If the department does not approve the on-site ((~~strategy~~)) program management plan, the local health officer must amend and resubmit the on-site program management plan to the department for approval.

(4) Upon receipt of department approval or after ((~~thirty~~)) sixty days without notification, whichever comes first, the local health officer shall implement the on-site ((~~strategy~~)) program management plan.

(5) If the department denies approval of an on-site ((~~strategy~~)) program management plan, the local health officer may appeal the denial to the board. The board must make a final determination concerning the denial.

(6) The department must report any instances of a county bordering the Puget Sound not having an active, approved on-site program management plan, or not funding and implementing an approved on-site program management plan, to the Puget Sound partnership for consideration under RCW 90.71.350.

(7) The department shall assist local health jurisdictions in:

(a) Developing written on-site program management plans required by RCW 70.118A.030;

(b) Identifying reasonable methods for finding unknown systems; ((~~and~~))

(c) Developing or enhancing electronic data systems that will enable each local health jurisdiction to actively manage all on-site sewage ((~~disposal~~)) systems within their jurisdictions, with priority given to those on-site sewage ((~~disposal~~)) systems that are located in or which could affect designated marine recovery areas; and

(d) Developing best practices for ensuring the safe operation of on-site sewage disposal systems, including the design and maintenance of on-site sewage system risers and lids.

**Sec.**  RCW 70.118A.020 and 2006 c 18 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Department" means the department of health.

(3)(a) "Failing" means a condition of an existing on-site sewage disposal system or component that threatens the public health by:

(i) Inadequately treating sewage((~~, or by~~)); or

(ii) Creating a potential for direct or indirect contact between sewage and the public.

(b) Examples of a failing on-site sewage disposal system include:

((~~(a)~~)) (i) Sewage on the surface of the ground;

((~~(b)~~)) (ii) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

((~~(c)~~)) (iii) Sewage leaking from a sewage tank or collection system;

((~~(d)~~)) (iv) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;

((~~(e)~~)) (v) Inadequately treated effluent contaminating groundwater or surface water; ((~~or~~)) and

((~~(f)~~)) (vi) Noncompliance with standards stipulated on the permit.

(4) "Local health officer" or "local health jurisdiction" means the local health officers and local health jurisdictions in the following counties bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

(5) "Marine recovery area" means an area of definite boundaries where the local health officer, or the department in consultation with the health officer, determines that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

(6) "Marine recovery area on-site strategy" or "on-site strategy" means a local health jurisdiction's on-site sewage disposal system strategy required under RCW 70.118A.050. This strategy is a component of the on-site program management plan required under RCW 70.118A.030.

(7) "On-site sewage disposal system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage disposal system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. For purposes of this chapter, the term "on-site sewage disposal system" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(8) "Unknown system" means an on-site sewage disposal system that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required.

(9) "Unsafe system" means a condition of an existing on-site sewage disposal system that threatens public safety by creating a condition where a person could be injured or killed because a component or part of an on-site sewage disposal system is malfunctioning or missing. Examples of an unsafe system include, but are not limited to, missing or malfunctioning electrical junction box covers, lids, or risers.

**Sec.**  RCW 70.118A.080 and 2006 c 18 s 8 are each amended to read as follows:

(1) The department shall enter into a contract with each local health jurisdiction subject to the requirements of this chapter to implement plans developed under this chapter, ((~~and~~)) to develop or enhance electronic data systems required by this chapter, and to enhance the public safety as it relates to the operation of on-site sewage disposal systems. The contract must include state funding assistance to the local health jurisdiction from funds appropriated to the department for this purpose.

(2) The contract must require, at a minimum, that within a marine recovery area, the local health jurisdiction:

(a) Show progressive improvement in finding failing systems;

(b) Show progressive improvement in working with the owners of on-site sewage disposal ((~~system owners~~)) systems that qualify as failing systems, unsafe systems, or both to make needed system repairs;

(c) Is actively taking steps to find previously unknown systems and ensuring that they are inspected as required and repaired if necessary;

(d) Show progressive improvement in the percentage of on-site sewage disposal systems that are included in an electronic data system; and

(e) Of those on-site sewage disposal systems in the electronic data system, show progressive improvement in the percentage that have had required inspections.

(3) The contract must also include provisions for state assistance in updating the plan. ((~~Beginning July 1, 2012,~~)) The contract may adopt revised compliance dates, including those in RCW 70.118A.050, where the local health jurisdiction has demonstrated substantial progress in updating the on-site strategy.

((~~(4) The department shall convene a work group for the purpose of making recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists. The work group shall make its recommendation with consideration given to the 1998 report to the legislature entitled "On-Site Wastewater Certification Work Group" as it pertains to maintenance specialists. The work group may give priority to appropriate levels of certification or licensure of maintenance specialists who work in the Puget Sound basin.~~))

**Sec.**  RCW 70.118A.050 and 2006 c 18 s 5 are each amended to read as follows:

(1) The local health officer of a local health jurisdiction where a marine recovery area has been proposed under RCW 70.118A.040 shall develop and approve a marine recovery area on-site strategy that includes designation of marine recovery areas to guide the local health jurisdiction in developing and managing all existing on-site sewage disposal systems within marine recovery areas within its jurisdiction. The on-site strategy must be a component of the program management plan required under RCW 70.118A.030. The department may grant an extension of twelve months where a local health jurisdiction has demonstrated substantial progress toward completing its on-site strategy.

(2)(a) An on-site strategy for a marine recovery area must specify how the local health jurisdiction will ((~~by July 1, 2012, and thereafter,~~)) find:

((~~(a)~~)) (i) Existing failing systems and ensure that system owners make necessary repairs; and

((~~(b)~~)) (ii) Unknown systems and ensure that they are inspected as required to ensure that they are functioning properly, and repaired, if necessary.

(b) Any on-site strategies submitted as a component of an updated program management plan required under RCW 70.118A.030 must include provisions for identifying and correcting unsafe systems simultaneously with efforts to identify and correct failing systems.

**Sec.**  RCW 70.118A.060 and 2006 c 18 s 6 are each amended to read as follows:

(1) In a marine recovery area, each local health officer shall:

((~~(1)~~)) (a) Require that on-site sewage disposal system maintenance specialists, septic tank pumpers, or others performing on-site sewage disposal system inspections submit reports or inspection results to the local health jurisdiction regarding any failing system or unsafe system; and

((~~(2)~~)) (b) Develop and maintain an electronic data system of all on-site sewage disposal systems within a marine recovery area to enable the local health jurisdiction to actively manage on-site sewage disposal systems.

(2) In assisting development of electronic data systems under this section, the department shall work with local health jurisdictions with marine recovery areas and the on-site sewage disposal system industry to develop common forms and protocols to facilitate sharing of data. A marine recovery area on-site sewage disposal electronic data system must be compatible with all on-site sewage disposal electronic data systems used throughout a local health jurisdiction.

**Sec.**  RCW 90.71.350 and 2007 c 341 s 17 are each amended to read as follows:

(1) The council is accountable for achieving the action agenda. The legislature intends that all governmental entities within Puget Sound will exercise their existing authorities to implement the applicable provisions of the action agenda.

(2) The partnership shall involve the public and implementing entities to develop standards and processes by which the partnership will determine whether implementing entities are taking actions consistent with the action agenda and achieving the outcomes identified in the action agenda. Among these measures, the council may hold management conferences with implementing entities to review and assess performance in undertaking implementation strategies with a particular focus on compliance with and enforcement of existing laws. Where the council identifies an inconsistency with the action agenda, the council shall offer support and assistance to the entity with the objective of remedying the inconsistency. The results of the conferences shall be included in the state of the Sound report required under RCW 90.71.370.

(3)(a) In the event the council determines that an entity is in substantial noncompliance with the action agenda, it shall provide notice of this finding and supporting information to the entity. The council or executive director shall thereafter meet and confer with the entity to discuss the finding and, if appropriate, develop a corrective action plan.

(b) If no agreement is reached, the council shall hold a public meeting to present its findings and the proposed corrective action plan. If the entity is a state agency, the meeting shall include representatives of the governor's office and office of financial management. If the entity is a local government, the meeting shall be held in the jurisdiction and electoral representatives from the jurisdictions shall be invited to attend.

(c) If, after ((~~this~~)) the process outlined in this section, the council finds that substantial noncompliance continues, the council shall issue written findings and document its conclusions. The council may recommend to the governor that the entity be ineligible for state financial assistance until the substantial noncompliance is remedied.

(d) Any county located within Puget Sound that is not fulfilling the minimum requirements of chapter 70.118A RCW, including compliance with the on-site program management plan requirements of RCW 70.118A.030, must be found to be at least in partial substantial noncompliance under this section for the portion or portions of the action agenda most related to on-site sewage systems. The council has the discretion to take any actions within its power to encourage compliance with the requirements of RCW 70.118A.030.

(e) All instances of noncompliance shall be included in the state of the Sound report required under RCW 90.71.370.

(4) The council shall provide a forum for addressing and resolving problems, conflicts, or a substantial lack of progress in a specific area that it has identified in the implementation of the action agenda, or that citizens or implementing entities bring to the council. The council may use conflict resolution mechanisms such as, but not limited to, technical and financial assistance, facilitated discussions, and mediation to resolve the conflict. Where the parties and the council are unable to resolve the conflict, and the conflict significantly impairs the implementation of the action agenda, the council shall provide its analysis of the conflict and recommendations resolution to the governor, the legislature, and to those entities with jurisdictional authority to resolve the conflict.

(5) When the council or an implementing entity identifies a statute, rule, ordinance, or policy that conflicts with or is an impediment to the implementation of the action agenda, or identifies a deficiency in existing statutory authority to accomplish an element of the action agenda, the council shall review the matter with the implementing entities involved. The council shall evaluate the merits of the conflict, impediment, or deficiency, and make recommendations to the legislature, governor, agency, local government, or other appropriate entity for addressing and resolving the conflict.

(6) The council may make recommendations to the governor and appropriate committees of the senate and house of representatives for local or state administrative or legislative actions to address barriers it has identified to successfully implementing the action agenda.

**Sec.**  RCW 90.71.340 and 2007 c 341 s 16 are each amended to read as follows:

(1) The legislature intends that fiscal incentives and disincentives be used as accountability measures designed to achieve consistency with the action agenda by:

(a) Ensuring that projects and activities in conflict with the action agenda are not funded;

(b) Aligning environmental investments with strategic priorities of the action agenda; and

(c) Using state grant and loan programs to encourage consistency with the action agenda.

(2) The council shall adopt measures to ensure that funds appropriated for implementation of the action agenda and identified by proviso or specifically referenced in the omnibus appropriations act pursuant to RCW 43.88.030(1)(g) are expended in a manner that will achieve the intended results. In developing such performance measures, the council shall establish criteria for the expenditure of the funds consistent with the responsibilities and timelines under the action agenda, and require reporting and tracking of funds expended. The council may adopt other measures, such as requiring interagency agreements regarding the expenditure of provisoed or specifically referenced Puget Sound funds.

(3) The partnership shall work with other state agencies providing grant and loan funds or other financial assistance for projects and activities that impact the health of the Puget Sound ecosystem under chapters 43.155, 70.105D, 70.146, 77.85, 79.105, 79A.15, 89.08, and 90.50A RCW to, within the authorities of the programs, develop consistent funding criteria that prohibits funding projects and activities that are in conflict with the action agenda.

(4)(a) The partnership shall develop a process and criteria by which entities that consistently achieve outstanding progress in implementing the action agenda are designated as Puget Sound partners.

(b) State agencies shall work with the partnership to revise their grant, loan, or other financial assistance allocation criteria to create a preference for entities designated as Puget Sound partners for funds allocated to the Puget Sound basin, pursuant to RCW 43.155.070, 70.105D.070, 70.146.070, 77.85.130, 79.105.150, 79A.15.040, 89.08.520, and 90.50A.040. This process shall be developed on a timeline that takes into consideration state grant and loan funding cycles.

(c)(i) In addition to any other process or criteria that may be developed by the partnership for Puget Sound partner status, any county that develops, funds, and fully implements an on-site program management plan under RCW 70.118A.030 that has received approval from the department of health under RCW 70.118A.070 must be considered a Puget Sound partner regardless of its location in the state and be given any statutory benefits, including those related to funded grant programs, that the status of Puget Sound partner provides.

(ii) The status of Puget Sound partner attaches to a county upon the approval of its on-site program management plan by the department of health under RCW 70.118A.070 and remains as long as the county's plan continues to be implemented according to the department of health's approval. Nothing in this subsection (4)(c) requires the partnership to take any affirmative action in order for the Puget Sound partner designation to attach to a qualifying county or develop any other standards or protocols related to Puget Sound partner preferences.

(5) Any entity that receives state funds to implement actions required in the action agenda shall report biennially to the council on progress in completing the action and whether expected results have been achieved within the time frames specified in the action agenda.

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