

SENATE BILL REPORT

ESHB 1614

As Reported by Senate Committee On:
Ways & Means, April 26, 2009

Title: An act relating to petroleum pollution in storm water.

Brief Description: Reducing the amount of petroleum pollution in storm water.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Ormsby, Priest, Rodne, Eddy, Hunt, Pettigrew, Upthegrove, Blake, Nelson, Appleton, Pedersen, Simpson, Darneille, Williams, Hudgins, Dunshee, McCoy and Wood).

Brief History: Passed House: 4/25/09, 51-45.

Committee Activity: Ways & Means: 4/26/09 [DPF].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Keiser, Kline, Kohl-Welles, McDermott, Murray and Oemig.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Honeyford, Parlette, Pflug and Rockefeller.

Staff: Dianne Criswell (786-7433)

Background: A combination of federal, state, and local laws govern storm water management in Washington. The water quality implications of storm water runoff are addressed in the federal Clean Water Act. State water pollution control statutes also regulate water quality aspects of storm water management.

The federal Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate wastewater discharges from point sources to surface waters. The United States Environmental Protection Agency (EPA) has delegated authority to the Washington Department of Ecology (Ecology) to issue NPDES permits. The federal CWA and implementing EPA storm water regulations established two phases for NPDES permits to control storm water discharges from certain industries and

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construction sites, and from municipalities operating municipal separate storm sewer systems.

In addition to NPDES permit responsibilities, Ecology administers a state program regulating discharges from certain commercial, industrial, or municipal operations to ground or to publicly-owned treatment plants. Washington statute requires all pollution dischargers to use all known, available, and reasonable treatment methods to prevent and control water pollution.

Local governments have responsibility under federal and state law to manage storm water and authority under state law to construct and operate storm water management systems. Local governments may be subject to storm water management regulations through both the federal NPDES permit program and state pollution discharge permits.

Summary of Bill: Effective January 1, 2010, a fee of \$1.50 per barrel of petroleum products is imposed on petroleum products that contribute to storm water pollution at the point of first possession of those products. "Petroleum products that contribute to storm water pollution" is defined as asphalt and road oil, lubricants, motor vehicle fuel, motor diesel fuel, residual fuel oil, and any other petroleum substance that Ecology determines contributes to storm water pollution in the state. Petroleum products exported from or sold for export are not subject to the fee.

This fee must be deposited into the Water Pollution Account with the money to be used on activities or capital projects that mitigate or prevent storm water pollution by petroleum products or storm water pollution associated with petroleum products.

Forty percent of the money will be made available to local governments as grants to fund activities or capital projects that address petroleum contamination of storm water. To be eligible for these grants, local governments must provide 50 percent of the project costs from other non-state sources.

An additional 40 percent of the money must be made available to local governments as grants for retrofit projects that address petroleum contamination of storm water. This portion of the money must be prioritized for low-impact development retrofit projects.

Ten percent of the money must be allocated as grants to the Department of Transportation to fund activities or capital projects that address petroleum contamination of storm water related to existing transportation infrastructure.

The remaining 10 percent must be allocated either as grants to fund capital projects or as grants for projects that address petroleum contamination of storm water specifically to the highest priority projects based upon ecological and water quality benefits determined by Ecology.

To qualify for funding, applicants must also demonstrate: (1) a clear relationship between the petroleum products that contribute to storm water pollution and the project's or activity's outcomes; and (2) that the project is an identified priority based on ecological or water quality needs throughout the jurisdiction, basin, or watershed.

Ecology must develop criteria for administering the program and ranking projects for funding. All approved projects must demonstrate the potential to achieve clear ecological or water quality benefits. Ecology must endeavor to distribute the monies within each geographic region of the state in proportion to the severity of impacts on the state's waters from petroleum contamination.

Ecology will administer the grant program and collect the fee. Ecology may retain 3 percent of the monies to administer the grant program. Grant applications must be initiated by July 1, 2010. By December 1, 2011, and every two years thereafter, Ecology must report to the Governor and the Legislature on the progress of the program and the suitability of revenue distributions.

Appropriation: None.

Fiscal Note: Requested on April 25, 2009.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: Storm water pollution is the largest threat to water quality. There is a nexus between these products and storm water pollution of the Puget Sound and rivers and streams throughout the state. This is an urban and rural issue; this is an Eastern and Western Washington issue. This is the most significant legislative proposal to improve the water quality of Puget Sound and the health of fish and wildlife. This fee imposes a fair share of clean-up costs on industries whose petroleum products constitute 65 percent of storm water pollutants. Currently, local governments are mandated by federal law to clean-up storm water and these activities have been funded by property taxpayers, utility users, and other state and local sources. This is a regulatory fee which places the fair proportion of the cost of clean-up on the companies whose products contribute. This is a timely and thoughtful solution, because as storm water pollution has increased, the budget crisis has restricted resources for clean-up. This will not lead to competitive disadvantage, because all products for export are not included and any products imported to Washington would have the fee applied. Water runs downhill and ports cannot afford to dredge contaminated sediment, which is a loss of economic benefit for those facilities. There are inconsistencies in opponents' arguments that this fee will have to be absorbed by industry, but that it will also be passed on to consumers. The problem is severe and we have significant investment needs. This is, in part, a matching program where local governments need to put in half the revenues to receive grants. There are many economic activities, such as fishing, which are dependent on healthy waters. Further, investing in storm water clean-up will stimulate economic activity throughout the state. Our cities, counties, and taxpayers cannot do this alone.

CON: The petroleum market is very complicated. Those complicated dynamics, coupled with the effect this tax might have on end consumers warrants further consideration and debate of the concepts in this proposed legislation. There are five refineries in Washington

which each directly support hundreds of family wage jobs, and create indirect employment in the surrounding communities. These companies spend millions to improve and prevent pollution. This bill places the burden for storm water clean-up on the petroleum industries far beyond our responsibilities and ability to control pollution. It is unfair to impose responsibility for clean-up on the petroleum industry alone when there are many other factors which contribute to storm water pollution. This charge is called a fee, but is really a tax because no other polluters are required to pay the fee, certain types of fuel are exempt, revenues are used to support general government, and there are no methods to identify petroleum products which are pollutants. Our state and local taxes would be doubled as a result of this legislation. Despite popular perception, the falling petroleum prices have impacted this industry and we might not be able to absorb these costs and remain in Washington. The tough economic climate should also be considered as this tax is passed down. For example, many bulk users are struggling to continue operations during the credit crunch. Also, this tax might be passed to consumers and increase gas prices by \$0.04 per gallon. Washington trucking will be disadvantaged by paying higher diesel prices.

Persons Testifying: PRO: Mo McBroom, Washington Environmental Council; Bruce Wishart, People for Puget Sound; Bill Robinson, The Nature Conservancy; Miguel Perez Gibson, National Audubon Society; Dave Williams, Association of Cities; Scott Merriman, Association of Counties, Eric Johnson, Washington Public Ports Association.

CON: Greg Hanon, Western States Petroleum Association; Jeff Pizter, BP; Don Soronson, Tesoro; Charlie Brown, Washington Oil Marketers Association; Grant Nelson, Association of Washington Business; Larry Pursley, Washington Trucking Association.