
SUBSTITUTE HOUSE BILL 1614

State of Washington

61st Legislature

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By House 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)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to petroleum pollution in storm water; adding new
2 sections to chapter 90.48 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) Contaminated storm water runoff is a
5 major water pollution problem in the state. It impacts rivers,
6 aquifers, lakes, and streams across Washington. Addressing storm water
7 is one of the Puget Sound partnership's top strategic priorities for
8 Puget Sound recovery.

9 (2) The storm water problem is a function of both increased runoff
10 due to impervious surfaces and to the toxic substances that pollute the
11 runoff.

12 (3) Petroleum is the single largest contributor to storm water
13 pollution. Contamination from petroleum products in surface water
14 runoff accounts for a significant portion of the total pollution load
15 in Puget Sound.

16 (4) Petroleum and petroleum byproducts pollute storm water through
17 a multitude of diverse and diffuse pathways. Combustion of gasoline,
18 diesel, residual fuel oil, and other petroleum products emit pollutants
19 such as hydrocarbons, polycyclic aromatic hydrocarbons, zinc, and

1 arsenic, which then disperse and depose on the ground. Petroleum-based
2 chemicals leach from substances such as paving asphalt and roofing
3 materials. Oil and grease drip from vehicles and equipment onto roads
4 and parking lots. When rainwater flows across impervious surfaces,
5 these contaminants are mobilized and transported to water bodies.

6 (5) The federal government and the state of Washington have
7 identified remediation to storm water runoff through national pollutant
8 discharge elimination system phase I and II requirements for the state
9 and local jurisdictions. In addition, impacts from polluted storm
10 water may be mitigated through retrofit projects for existing
11 infrastructure.

12 (6) The Puget Sound partnership's action agenda calls for improved
13 storm water management by implementing national pollutant discharge
14 elimination system permits, providing financial and technical
15 assistance to communities, advancing the use of low-impact development
16 approaches, and prioritizing and implementing storm water retrofits.

17 (7) Current funding for addressing the direct effects of polluted
18 storm water is insufficient to meet existing needs. That funding is
19 raised largely by local governments and is disproportionately borne by
20 fees levied on individual developers and property owners.

21 (8) It is the intent of the legislature to impose a burden offset
22 charge, a regulatory fee on entities that cause petroleum products to
23 be present in the state, in order to allocate and recover the
24 proportional costs of the public programs necessary to address the
25 negative impacts from this substance on the state's waters.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW
27 to read as follows:

28 (1) The water pollution account is created in the state treasury.
29 All fees collected under section 3 of this act must be deposited in the
30 account. Moneys in the account may be spent only after appropriation.
31 Expenditures from the account may be used only for mitigating or
32 preventing storm water pollution by petroleum products or storm water
33 pollution associated with petroleum products.

34 (2) After deducting the department's administrative costs
35 associated with collecting the fees and administering a competitive
36 grant process:

1 (a) Approximately forty percent of the moneys must be allocated
2 through the grant process to local governments to fund capital projects
3 or activities that address petroleum contamination of storm water
4 through the implementation of the national pollutant discharge
5 elimination system programs permitted under this chapter. To be
6 eligible, local governments must provide fifty percent of project or
7 activity costs from other nonstate fund sources.

8 (b) Approximately forty percent of the moneys must be allocated
9 through the grant process to local governments for retrofit projects
10 that address petroleum contamination of storm water. The moneys must
11 be prioritized for low-impact development retrofit projects, but moneys
12 may be awarded for other retrofit projects if the site does not lend
13 itself to low-impact development techniques. After December 31, 2012,
14 in order to qualify for funding, project proponents must demonstrate
15 the following:

16 (i) Clear and substantial ecological or water quality benefits; and

17 (ii) The project is an identified priority based on an analysis of
18 needs throughout the jurisdiction, basin, or watershed.

19 (c) Approximately twenty percent of the money must be allocated
20 through either existing storm water grant programs or the grant process
21 to projects under (a) or (b) of this subsection and to the highest
22 priority projects based upon ecological and water quality benefits
23 determined by the department. For projects qualifying under this
24 subsection (2)(c), moneys may be allocated to meet the matching
25 requirements under (a) of this subsection to jurisdictions that
26 demonstrate economic hardship in meeting the matching requirement.

27 (3) The department shall develop criteria for administering the
28 program and ranking projects for funding. In developing these
29 criteria, the department shall consult with the Puget Sound
30 partnership. The department shall endeavor to distribute the moneys
31 within each geographic region of the state in proportion to the
32 severity of impacts on the state's waters from petroleum contamination.

33 (4) Administration of the grant program, including the collection
34 of fees under section 3 of this act, must be paid for out of the water
35 pollution account. Notwithstanding program implementation costs, no
36 more than three percent of the moneys from the account may be used to
37 administer the grant program on a continuing basis.

1 (5) The department shall initiate the grant application process by
2 July 1, 2010.

3 (6) By December 1, 2014, the department shall report to the
4 legislature on the progress of the program and the adequacy of the
5 percentage allocations specified in subsection (2)(a) through (c) of
6 this section.

7 (7) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Low-impact development" means a storm water management and
10 land development strategy applied at the parcel and subdivision level
11 that emphasizes conservation and use of on-site natural features
12 integrated with engineered, small-scale hydrologic controls to more
13 closely mimic predevelopment hydrologic functions.

14 (b) "Retrofit" means the renovation of existing development to
15 improve or eliminate storm water problems associated with the site.

16 (c) "Capital project" means the capital project, including the
17 construction and associated costs, described in capital budget
18 instructions issued by the office of financial management.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
20 to read as follows:

21 (1) Effective January 1, 2010, a fee is imposed on the first
22 possession of petroleum products that contribute to storm water
23 pollution for the purpose of offsetting the harm caused by petroleum
24 pollution of storm water in this state. The fee is one dollar and
25 fifty cents per barrel of petroleum product that contributes to storm
26 water pollution.

27 (2) Fees collected under this section must be deposited in the
28 water pollution account created in section 2 of this act and applied
29 solely for the pollution prevention and mitigation purposes permitted
30 under section 2 of this act and for the administration of the program
31 required under section 2 of this act.

32 (3) The fee must be collected by the department. No later than
33 January 1, 2010, the department shall adopt rules governing the
34 collection of the fees. The department may enter into agreements with
35 other state agencies to facilitate the most efficient collection
36 system.

1 (4) It is the intent of this section to impose a fee only once for
2 petroleum products that contribute to storm water pollution that are
3 possessed in this state. Accordingly, the fee is imposed on the first
4 possession of such products. The fee is not imposed on the possession
5 of small amounts of petroleum products that is first possessed by a
6 consumer or by a retailer for the purpose of sale to ultimate
7 consumers.

8 (5) Petroleum products exported from or sold for export from the
9 state are not subject to the fee imposed under this section.

10 (6) The definitions in this subsection apply throughout this
11 section unless the context clearly requires otherwise.

12 (a) "Barrel" means a unit of measurement of volume equal to forty-
13 two United States gallons of crude oil or petroleum product.

14 (b) "Control" means the power to sell or use the petroleum product
15 or to authorize the sale or use by another.

16 (c) "Petroleum products that contribute to storm water pollution"
17 means asphalt and road oil, lubricants, motor vehicle fuel, motor
18 diesel fuel, and residual fuel oil, and any other petroleum substance
19 that the department determines contributes to storm water pollution in
20 the state. The term does not include crude oil, aviation gasoline, jet
21 fuel, home heating oil, dyed special fuel, or clear special fuel used
22 for agricultural purposes.

23 (d) "Possession" means the act of taking control of the petroleum
24 product located within this state, whether the person taking control
25 does so by bringing, receiving, creating, or extracting the petroleum
26 product in this state, and includes both actual and constructive
27 possession. "Actual possession" occurs when the person with control
28 obtains physical possession. "Constructive possession" occurs when the
29 person with control does not obtain physical possession.

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