

SHB 1261 - H AMD TO H AMD (H-4095.2/20) **1117**
By Representative Stokesbary

NOT ADOPTED 02/12/2020

1 On page 9, after line 34, insert the following:

2 "Sec. 5. RCW 90.48.366 and 2011 c 122 s 9 are each amended to
3 read as follows:

4 (1)(a) The department, in consultation with the departments of
5 fish and wildlife and natural resources, and the parks and recreation
6 commission, shall adopt rules establishing a compensation schedule
7 for the discharge of oil in violation of this chapter and chapter
8 90.56 RCW. The amount of compensation assessed under this schedule
9 shall be:

10 ((+a)) (i) For spills totaling one thousand gallons or more in
11 any one event, no less than three dollars per gallon of oil spilled
12 and no greater than three hundred dollars per gallon of oil spilled;
13 and

14 ((+b)) (ii) For spills totaling less than one thousand gallons
15 in any one event, no less than one dollar per gallon of oil spilled
16 and no greater than one hundred dollars per gallon of oil spilled.

17 ((+2)) (b) Persistent oil recovered from the surface of the
18 water within forty-eight hours of a discharge must be deducted from
19 the total spill volume for purposes of determining the amount of
20 compensation assessed under the compensation schedule.

21 (2) In order to reduce the incidence rate of prohibited
22 discharges of wastewater directly into Puget Sound, the department,
23 in consultation with the departments of fish and wildlife and natural
24 resources, and the parks and recreation commission, shall adopt rules
25 establishing a compensation schedule for the prohibited discharge of
26 wastewater directly or indirectly into Puget Sound in violation of a
27 permit required by RCW 90.48.162 and issued under this chapter. The
28 amount of compensation assessed under the compensation schedule must
29 be no less than one-tenth of one cent per gallon wastewater
30 discharged in violation of a permit and no greater than thirteen
31 cents per gallon of wastewater discharged in violation of a permit.
32 By rule, the department may establish a minimum discharge volume or

1 compensation amount, below which compensation is not assessed under
2 this subsection. The prohibited wastewater discharges subject to the
3 provisions of this section include combined sewer overflows of sewage
4 and stormwater.

5 (3) The compensation schedules adopted under this section shall
6 reflect adequate compensation for unquantifiable damages or for
7 damages not quantifiable at reasonable cost for any adverse
8 environmental, recreational, aesthetic, or other effects caused by
9 the spill and shall take into account:

10 (a) Characteristics of any (~~oil~~) substance spilled, such as
11 toxicity, dispersibility, solubility, and persistence, that may
12 affect the severity of the effects on the receiving environment,
13 living organisms, and recreational and aesthetic resources;

14 (b) The sensitivity of the affected area as determined by such
15 factors as:

16 (i) The location of the spill;

17 (ii) Habitat and living resource sensitivity;

18 (iii) Seasonal distribution or sensitivity of living resources;

19 (iv) Areas of recreational use or aesthetic importance;

20 (v) The proximity of the spill to important habitats for birds,
21 aquatic mammals, fish, or to species listed as threatened or
22 endangered under state or federal law;

23 (vi) Significant archaeological resources as determined by the
24 department of archaeology and historic preservation; and

25 (vii) Other areas of special ecological or recreational
26 importance, as determined by the department; and

27 (c) Actions taken by the party who spilled (~~oil~~) the substance
28 or any party liable for the spill that:

29 (i) Demonstrate a recognition and affirmative acceptance of
30 responsibility for the spill, such as the immediate removal of oil
31 and the amount of oil removed from the environment or other proactive
32 measures designed to mitigate the severity of impacts of a prohibited
33 nonoil spill; or

34 (ii) Enhance or impede the detection of the spill, the
35 determination of the quantity of oil or other prohibited substances
36 spilled, or the extent of damage, including the unauthorized removal
37 of evidence such as injured fish or wildlife.

38 **Sec. 6.** RCW 90.48.367 and 1991 c 200 s 813 are each amended to
39 read as follows:

1 (1) After a spill or other incident causing damages to the
2 natural resources of the state, the department shall conduct a formal
3 preassessment screening as provided in RCW 90.48.368.

4 (2) The department shall use the compensation schedule
5 established under RCW 90.48.366 to determine the amount of damages
6 for all prohibited discharges of wastewater directly or indirectly
7 into Puget Sound in violation of a permit required by RCW 90.48.162
8 or if the preassessment screening committee determines that: (a)
9 Restoration or enhancement of the injured resources is not
10 technically feasible; (b) damages are not quantifiable at a
11 reasonable cost; and (c) the restoration and enhancement projects or
12 studies proposed by the liable parties are insufficient to adequately
13 compensate the people of the state for damages.

14 (3) If the preassessment screening committee determines that the
15 compensation schedule should not be used, compensation shall be
16 assessed for the amount of money necessary to restore any damaged
17 resource to its condition before the injury, to the extent
18 technically feasible, and compensate for the lost value incurred
19 during the period between injury and restoration.

20 (4) Restoration shall include the cost to restock such waters,
21 replenish or replace such resources, and otherwise restore the
22 stream, lake, or other waters of the state, including any estuary,
23 ocean area, submerged lands, shoreline, bank, or other lands
24 adjoining such waters to its condition before the injury, as such
25 condition is determined by the department. The lost value of a
26 damaged resource shall be equal to the sum of consumptive,
27 nonconsumptive, and indirect use values, as well as lost taxation,
28 leasing, and licensing revenues. Indirect use values may include
29 existence, bequest, option, and aesthetic values. Damages shall be
30 determined by generally accepted and cost-effective procedures,
31 including, but not limited to, contingent valuation method studies.

32 (5) Compensation assessed under this section shall be recoverable
33 in an action brought by the attorney general on behalf of the people
34 of the state of Washington and affected counties and cities in the
35 superior court of Thurston county or any county in which damages
36 occurred. Moneys recovered by the attorney general under this section
37 shall be deposited in the coastal protection fund established under
38 RCW 90.48.390, and shall only be used for the purposes stated in RCW
39 90.48.400.

1 (6) Compensation assessed under this section shall preclude
2 claims under this chapter by local governments for compensation for
3 damages to publicly owned resources resulting from the same incident.

4 **Sec. 7.** RCW 90.48.368 and 2007 c 347 s 2 are each amended to
5 read as follows:

6 (1) The department shall adopt rules establishing a formal
7 process for preassessment screening of damages resulting from spills
8 to the waters of the state causing the death of, or injury to, fish,
9 animals, vegetation, or other resources of the state. The rules shall
10 specify the conditions under which the department shall convene a
11 preassessment screening committee. The preassessment screening
12 process shall occur concurrently with reconnaissance activities. The
13 committee shall use information obtained from reconnaissance
14 activities as well as any other relevant resource and resource use
15 information. For each incident other than prohibited discharges of
16 wastewater directly or indirectly into Puget Sound in violation of a
17 permit required by RCW 90.48.162, the committee shall determine
18 whether a damage assessment investigation should be conducted, or,
19 whether the compensation schedule authorized under RCW 90.48.366 and
20 90.48.367 should be used to assess damages. For prohibited discharges
21 of wastewater directly or indirectly into Puget Sound in violation of
22 a permit required by RCW 90.48.162, the compensation schedule
23 provided in RCW 90.48.366(2) must be used. The committee may accept
24 restoration or enhancement projects or studies proposed by the liable
25 parties in lieu of some or all of: (a) The compensation schedule
26 authorized under RCW 90.48.366(1) and 90.48.367; or (b) the claims
27 from damage assessment studies authorized under RCW 90.48.142.

28 (2) A preassessment screening committee may consist of
29 representatives of the departments of ecology, archaeology and
30 historic preservation, fish and wildlife, health, and natural
31 resources, and the parks and recreation commission, as well as other
32 federal, state, and local agencies, and tribal and local governments
33 whose presence would enhance the reconnaissance or damage assessment
34 aspects of spill response. The department shall chair the committee
35 and determine which representatives will be needed on a spill-by-
36 spill basis.

37 (3) The committee shall consider the following factors when
38 determining whether a damage assessment study authorized under RCW
39 90.48.367 should be conducted: (a) Whether evidence from

1 reconnaissance investigations suggests that injury has occurred or is
2 likely to occur to publicly owned resources; (b) the potential loss
3 in services provided by resources injured or likely to be injured and
4 the expected value of the potential loss; (c) whether a restoration
5 project to return lost services is technically feasible; (d) the
6 accuracy of damage quantification methods that could be used and the
7 anticipated cost-effectiveness of applying each method; (e) the
8 extent to which likely injury to resources can be verified with
9 available quantification methods; and (f) whether the injury, once
10 quantified, can be translated into monetary values with sufficient
11 precision or accuracy.

12 (4) When a resource damage assessment is required for an oil
13 spill in the waters of the state, as defined in RCW 90.56.010, the
14 state trustee agency responsible for the resource and habitat damaged
15 shall conduct the damage assessment and pursue all appropriate
16 remedies with the responsible party.

17 (5) Oil spill damage assessment studies authorized under RCW
18 90.48.367 may only be conducted if the committee, after considering
19 the factors enumerated in subsection (3) of this section, determines
20 that the damages to be investigated are quantifiable at a reasonable
21 cost and that proposed assessment studies are clearly linked to
22 quantification of the damages incurred.

23 (6) As new information becomes available, the committee may
24 reevaluate the scope of damage assessment using the factors listed in
25 subsection (3) of this section and may reduce or expand the scope of
26 damage assessment as appropriate.

27 (7) The preassessment screening process shall provide for the
28 ongoing involvement of persons who may be liable for damages
29 resulting from an oil spill. The department may negotiate with a
30 potentially liable party to perform restoration and enhancement
31 projects or studies which may substitute for all or part of the
32 compensation authorized under RCW 90.48.366 and 90.48.367 or the
33 damage assessment studies authorized under RCW 90.48.367.

34 (8) For the purposes of this section and RCW 90.48.367, the cost
35 of a damage assessment shall be considered "reasonable" when the
36 anticipated cost of the damage assessment is expected to be less than
37 the anticipated damage that may have occurred or may occur."

38 Correct the title.

EFFECT: Directs the Department of Ecology (Ecology) to develop a compensation chart for natural resource damages (NRD) caused by discharges not authorized by a National Pollutant Discharge Elimination System permit to Puget Sound by entities operating sewerage systems.

Provides that the compensation scheme must cover both discharges of sewage wastewater from facilities and combined sewer overflows.

Specifies that the NRDs collected for discharges must range between 1/10th of a cent to 13 cents per gallon of discharge.

Directs Ecology, in developing the compensation chart, to consider criteria similar to those used for creating the NRD chart that is used for oil spills.

Provides that funds from spills will be deposited in the Coastal Protection Fund.

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