

# HOUSE BILL REPORT

## ESHB 1614

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### As Passed House:

April 25, 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:

#### Committee Activity:

Agriculture & Natural Resources: 2/12/09, 2/19/09 [DPS];

Capital Budget: 2/24/09, 2/27/09 [DPS(AGNR)].

#### Floor Activity

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

### Brief Summary of Engrossed Substitute Bill

- Creates the Water Pollution Account for mitigating and preventing storm water pollution from petroleum products.
- Authorizes a \$1.50 per barrel fee on the first possession of petroleum products that contribute to storm water pollution.
- Allocates funds through a competitive grant process and to the Department of Ecology for funding existing storm water grant programs and low-impact development retrofit projects and capital projects that address petroleum contamination of storm water through the implementation of the National Pollutant Discharge Elimination System programs.
- Allocates funds to the Washington Department of Transportation to fund activities or capital projects that address petroleum contamination of storm water related to existing transportation infrastructure through the implementation of the Washington Department of Transportation's National Pollutant Discharge Elimination System programs.

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Blake, Chair; Jacks, Liias, McCoy, Nelson, Ormsby and Van De Wege.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Pearson and Warnick.

**Staff:** Jaclyn Ford (786-7339)

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## HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Blake, Chase, Jacks, Maxwell, Orwall and White.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Grant-Herriot, Hope, McCune and Smith.

**Staff:** Nona Snell (786-7153)

### **Background:**

#### Federal Law.

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA defines "pollutant" broadly to include a variety of materials that may be discharged into water through human activities, construction, industrial processes, or other methods. Among other requirements, the CWA sets effluent limitations for discharges of pollutants to navigable waters and requires states to adopt surface water quality standards to protect humans, fish, and other aquatic life.

The CWA also establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater and storm water discharges. The NPDES permits are required for wastewater discharges from point sources (discernable, discrete, and confined conveyances) to surface waters. The NPDES permits also are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria.

#### State Law.

The CWA authorizes the U.S. Environmental Protection Agency (EPA) to delegate the NPDES permit authority to designated state agencies. The EPA has delegated the NPDES permit authority for Washington to the Department of Ecology (DOE).

### **Summary of Engrossed Substitute Bill:**

#### Fee on Petroleum Products that Contribute to Storm Water Pollution.

Beginning January 1, 2010, a fee must be charged on the first possession of petroleum products that contribute to storm water pollution to offset harm caused by petroleum pollution of storm water in Washington. The fee is \$1.50 per barrel of petroleum product that contributes to storm water pollution.

The fee must be collected by the DOE; however, the DOE may enter into agreements with other state agencies to facilitate the most efficient collection system. The DOE must adopt rules governing the collection of the fees no later than January 1, 2010.

The fee is imposed on the first possession of petroleum products. However, petroleum products exported from or sold for export are not subject to the fee, nor are small amounts of petroleum products that are first possessed by a consumer or by a retailer for the purpose of sale to ultimate consumers.

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

#### Water Pollution Account.

Money collected from the fees on petroleum products that contribute to storm water pollution must be deposited into the Water Pollution Account (Account). Funds in the Account may be spent only after appropriation. Expenditures may 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.

#### Allocation of Funds.

The DOE must first deduct administrative costs associated with collecting the fees and administering a competitive grant process. Then, approximately 40 percent of the funds must be allocated through a competitive grant process to local governments to fund capital projects or activities that address petroleum contamination of storm water through the implementation of the NPDES programs. To be eligible, local governments must provide 50 percent of project activity costs from other non-state fund sources.

Additionally, approximately 40 percent of the funds must be allocated through a competitive grant process open to local governments for retrofit projects that address petroleum contamination of storm water. The funds must be prioritized for projects that utilize low-impact development retrofit strategies, but money may be awarded for other retrofit projects if the site does not lend itself to low-impact development techniques.

To qualify for funding, project proponents and the WSDOT must demonstrate the following:

- a clear relationship between petroleum products that contribute to storm water pollution and the project's or activities outcomes; and
- that the project is an identified priority based on an analysis of ecological or water quality needs throughout the jurisdiction, basin, or watershed.

The last 20 percent of the money must be allocated by the DOE to either existing storm water grant programs or low-impact development retrofit projects and capital projects that address petroleum contamination of storm water through the implementation of the NPDES programs, and must be allocated to the highest priority projects based upon ecological and water quality benefits determined by the DOE.

Administration of the grant program must be paid for out of the Account. No more than 3 percent of the money from the Account may be used to administer the grant program.

Criteria for Projects.

The DOE must develop criteria for administering the program and ranking projects for funding. In developing criteria applicable to projects in the Puget Sound basin, the DOE must consult with the Puget Sound Partnership. The DOE must try to distribute the money within each geographic region of the state in proportion to the severity of impact on the state's waters from petroleum contamination.

The DOE must initiate the grant application process by July 1, 2010.

Report to the Legislature.

By December 1, 2011, and every two years thereafter, the DOE must report to the Legislature on the progress of the program and the adequacy of the percentage allocations.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony** (Agriculture & Natural Resources):

(In support) Petroleum is the single largest contributor to storm water pollution. This is a statewide program for a statewide problem. State jurisdictions have challenges funding the NPDES permits. This is a critical effort to clean up the Puget Sound. There is a problem that needs to be tackled; retrofits are needed in communities. This bill is a solution that brings together diverse stakeholders and will raise money to clean up our water. Communities do not want contamination or recontamination of their waters; this bill will help cities go beyond the NPDES permit requirements. This bill is the only option we have because most natural resource budgets are being cut.

(Information only) Storm water is the biggest threat to the Puget Sound; it affects water quality and native species, as well as significant damage to property. Nonpoint issues are the next big step to tackling the problems with water quality. This is a statewide problem, not just a problem in the Puget Sound.

(Opposed) Samples have not been evaluated to determine the level of petroleum found in storm water in Washington. This bill has a tax, not a fee.

**Staff Summary of Public Testimony (Capital Budget):**

(In support) The bill brings a positive solution to address stormwater pollutants, particularly petroleum products. The bill is timely, helps address capital budget needs, and provides economic stimulus by raising money and making grants available to cities and counties throughout the state, including the Puget Sound area and eastern Washington in both large and small communities. Stormwater is a quantity and flood control issue and this bill will mitigate this issue.

(Opposed) Petroleum is one of 14 identified sources of stormwater runoff and this bill only focuses on one source. This bill imposes a tax without any regulation of petroleum.

**Persons Testifying (Agriculture & Natural Resources):** (In support) Representative Ormsby, prime sponsor; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Dave Williams, Association of Washington Cities; Dan Wrye, Pierce County; Bruce Wishart, People for Puget Sound; Bill Dewey, Taylor Shellfish Company; Lorna Mauren, City of Tacoma; and Bill Robinson, The Nature Conservancy.

(Information only) Bruce Wulkan, Puget Sound Partnership; and Josh Baldi, Department of Ecology.

(Opposed) Greg Hanon, Western States Petroleum Association.

**Persons Testifying (Capital Budget):** (In support) Bill Robinson, The Nature Conservancy; and Dave Williams, Association of Washington Cities.

(Opposed) Greg Hanon, Western States Petroleum Association.

**Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources):**  
None.

**Persons Signed In To Testify But Not Testifying (Capital Budget):** None.