H-3295.1

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**HOUSE BILL 2275**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Stokesbary, Van Werven, and Irwin

AN ACT Relating to certain illegal discharges of sewage wastewater into Puget Sound; amending RCW 90.48.366, 90.48.367, and 90.48.368; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Puget Sound is a unique resource of significant environmental, economic, recreational, aesthetic, and cultural value to Washington. Among many laws focused on protecting Puget Sound and its resources, the legislature has even created an entire state agency, the Puget Sound partnership, that is dedicated to maintaining and restoring Puget Sound.

(b) Unfortunately, among many threats to Puget Sound, the environmental impacts of wastewater discharges from municipal sewage systems have become especially problematic. In King county alone, there have been multiple large-scale spills in the past few years that together discharged hundreds of millions of gallons of sewage from improperly functioning treatment plants. In addition, hundreds of millions of gallons of combined sewage overflows are annually discharged in King county even when wastewater treatment plants function as expected; a fact that compounds the local environmental stress posed when wastewater treatment plants fail.

(c) Pollution is pollution, regardless of its source. When pollution enters Puget Sound and impacts sensitive ecosystems, harms economic activities and treaty-protected rights, such as shellfish fisheries, and limits recreational use of beaches and waters, this represents a natural resource damage affecting the people of Washington, regardless of whether that damage has arisen from a spill of oil or a spill of sewage. However, current law does not treat all threats to Puget Sound equally seriously.

(2) Therefore, it is the intent of the legislature to require compensation for natural resource damages to Puget Sound caused by certain illegal discharges of sewage-contaminated wastewater in a manner that is similar to the compensation required for natural resource damages caused by illegal discharges of oil. Furthermore, because of the difficulties and costs associated with precisely quantifying the natural resource damages caused by sewage spills, it is the intent of the legislature to direct the department of ecology to adopt a compensation schedule similar to that used to determine assessments for spills of oil that cause damages that are unquantifiable or not quantifiable at a reasonable cost.

**Sec.**  RCW 90.48.366 and 2011 c 122 s 9 are each amended to read as follows:

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

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

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

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

(2) The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the illegal discharge of wastewater directly or indirectly into Puget Sound in violation of a permit required by RCW 90.48.162 and issued under this chapter. The amount of compensation assessed under the compensation schedule must be no less than one-tenth of one cent per gallon wastewater discharged in violation of a permit and no greater than thirteen cents per gallon of wastewater discharged in violation of a permit. By rule, the department may establish a minimum discharge volume or compensation amount, below which compensation is not assessed under this subsection. The illegal wastewater discharges subject to the provisions of this section include combined sewer overflows of sewage and stormwater.

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

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

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

(i) The location of the spill;

(ii) Habitat and living resource sensitivity;

(iii) Seasonal distribution or sensitivity of living resources;

(iv) Areas of recreational use or aesthetic importance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

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

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

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

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

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

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