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**HOUSE BILL 1540**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Abbarno, Boehnke, Barkis, Walsh, Ybarra, Klicker, and Chambers

AN ACT Relating to addressing illicit discharges of wastewater pollution associated with individuals residing in vehicles; amending RCW 90.48.144, 36.89.080, 35.67.020, and 90.48.120; adding new sections to chapter 90.48 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds that some communities are encountering negative impacts to the environment and water quality caused when people are unable to find permanent housing. There is a need to improve government accountability by focusing resources on the problem of illicit dischargers of wastewater into storm drains that flow into critical aquifers that provide drinking water, bodies of water, flood ways, and flood zones. This act provides some tools to help communities address issues surrounding illicit discharges connected to vehicles setting up residence on public property never intended for this purpose. This act adds flexibility to existing funding sources, keeping in mind the restrictions of Article VIII, section 7 of the state Constitution that aid can be provided to support the poor and infirm, and empowers the department of ecology and local governments to apply meaningful enforcement that results in improved conditions and safer communities.

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

(1) As a supplementary component of the requirements of municipal stormwater permits issued under this chapter, each permittee must establish a program to identify and prevent illicit discharges from vehicles used as residences into critical aquifers, municipal stormwater systems, and connected waters in portions of the jurisdiction covered by the permit that include the activities described in sections 3 and 4 of this act.

(2) Each permittee must establish a program to identify and report to the department locations where there is a substantial potential for pollution from illicit discharges arising from people residing in vehicles that are parked overnight in parking lots or on public rights-of-way and highways as defined in RCW 47.04.010 that are near sources of drinking water, critical aquifers, and stormwater drains that flow directly to flood plains or waters of the state. The program may include:

(a) Notification and outreach to operators or inhabitants of vehicles regarding available options for the safe and legal disposal of wastewater;

(b) Enforcement of the provisions of section 3 of this act;

(c) The provision of wastewater disposal options consistent with section 4 of this act; and

(d) Orders for vehicles to be moved while providing other locations to legally park.

(3) For the purposes of this section, "permittee" means a city or county that is required to obtain a municipal stormwater general permit issued by the department under this chapter.

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

(1) Local governments may enact an ordinance to prohibit overnight parking of recreational vehicles or other motor vehicles to prevent the illicit discharge of human waste or other chemicals from vehicles on public rights-of-way, highways, or parking lots that are adjacent to critical aquifers, state waters, or stormwater infrastructure that connects directly to state waters without pretreatment.

(2) The provisions of subsection (1) of this section do not apply to locations featuring on-site infrastructure intended to allow the pumpout or draining of wastewater from recreational vehicles.

(3) Local governments may conduct outreach focused for persons that own, operate, or inhabit a vehicle in violation of subsection (1) of this section. Outreach offered under this subsection may include personal interactions or the conspicuous placement of notices on vehicle entry doors or windshields, with the intention of informing the person regarding available wastewater disposal options, other locations to park that are less environmentally sensitive, or information about services that provide housing. Information provided to persons in violation of subsection (1) of this section must include information regarding the location of nearby facilities or services allowing for the disposal of wastewater from recreational vehicles, and the cost of such service, if this information is available.

(4)(a) There is a presumption that a substantial potential to pollute exists, consistent with the standard in RCW 90.48.120(1), when a vehicle is allowed to park overnight for more than 24 hours with a person residing in the vehicle.

(b) In addition to the authority granted to the department in RCW 90.48.120, a local government may notify a person who owns, operates, or inhabits a vehicle described in subsection (1) of this section of the local government's determination that there is a substantial potential of violation of the provisions of this chapter. The local government may direct that the vehicle be moved. The ordinance may provide anywhere from 24 hours to seven days' notice before a violation will be issued under this section dependent on the threat to public and environmental health particular to the circumstances. If a motor vehicle is equipped with wastewater storage capacity, the local government may allow a person to produce a copy of a receipt or other credible evidence demonstrating that the person used available legal wastewater disposal options for the vehicle either after receiving the notice or in the 14 days prior to receiving the notice. The failure to cease parking in targeted portions of a jurisdiction or to file a copy of a receipt or other credible evidence with the local government after receiving a notice of determination is subject to a class 3 civil infraction under RCW 7.80.120.

(c) Local governments are encouraged to prioritize enforcement in areas near drinking water sources, critical aquifers, and where elevated levels of fecal coliform have been found in receiving waters or stormwater infrastructure.

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

(1) In order to address illicit discharges of wastewater from motor vehicles equipped with wastewater storage capacity, each city with a population of at least 600,000, as determined by the office of financial management, must either:

(a) Make available and post information on its website regarding facilities or services allowing for low-cost or no-cost disposal of domestic wastewater from recreational vehicle and other motor vehicle wastewater storage tanks; or

(b) Post information on the city's website regarding privately owned resources within the jurisdictional boundaries of the city that provide services specified in (a) of this subsection to the public.

(2) Local governments not subject to the provisions in subsection (1) of this section are authorized to provide such services as well.

NEW SECTION. **Sec.**  (1) The department of ecology must compile and make available on its website a resource that lists or maps locations where the pumpout of domestic wastewater is made available for vehicles at low-cost or no-cost to the vehicle operator.

(2) The department of ecology must investigate water quality impacts associated with concentrations of vehicles reported to the department of ecology by cities and counties and the department of transportation, continue monitoring areas of concern, and take appropriate action to reduce or stop illicit discharges and to mitigate negative impacts of illicit discharges using available resources.

(3) The department of ecology and the Washington state patrol may enforce the provisions of this chapter with respect to illicit discharges as provided in RCW 90.48.144.

**Sec.**  RCW 90.48.144 and 1995 c 403 s 636 are each amended to read as follows:

(1) Except as provided in RCW 43.05.060 through 43.05.080 ((~~and~~)), 43.05.150, and subsection (2) of this section, every person who:

((~~(1)~~)) (a) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

((~~(2)~~)) (b) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or

((~~(3)~~)) (c) Violates the provisions of RCW 90.48.080, or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300.

(2)(a) The city, county, local law enforcement, department, or Washington state patrol may notify a person who owns, operates, or inhabits a vehicle parked overnight of the determination that there is a substantial potential of violation of the provisions of this chapter if the vehicle is parked in a public right-of-way, public parking lot, or highway, as defined in RCW 47.04.010, that is adjacent to state waters or that is served by stormwater infrastructure that connects directly to state waters without pretreatment. The notice must be conspicuously placed on a vehicle entry door or windshield and may contain information regarding low-cost or no-cost domestic wastewater disposal facilities or services.

(b) A vehicle identified in this section may be directed to be moved. The notice may provide anywhere from 24 hours to seven days before a violation will be issued under this section dependent on the threat to public and environmental health particular to the circumstance. If a motor vehicle is equipped with wastewater storage capacity, the government agency enforcing this section may allow a person to produce a copy of a receipt or other credible evidence demonstrating that the person used available legal wastewater disposal options for the vehicle either after receiving the notice or in the 14 days prior to receiving the notice. The failure to cease parking in targeted portions of a jurisdiction or to file a copy of a receipt or other credible evidence with the government agency enforcing this section after receiving a notice of determination is subject to a class 3 civil infraction under RCW 7.80.120. The department or Washington state patrol may issue a civil penalty of up to $50 to a person that presents a potential to pollute as described in this subsection (2).

**Sec.**  RCW 36.89.080 and 2003 c 394 s 3 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any stormwater control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

(a) Services furnished or to be furnished;

(b) Benefits received or to be received;

(c) The character and use of land or its water runoff characteristics;

(d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;

(e) Income level of persons served or provided benefits under this chapter, including senior citizens and ((~~disabled persons~~)) individuals with disabilities; or

(f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for stormwater control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, and improving any of such facilities, ((~~or~~)) to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose, or to coordinate and provide low-cost or no-cost wastewater disposal services for vehicles used as residences, in compliance with the restrictions of Article VIII, section 7 of the state Constitution.

**Sec.**  RCW 35.67.020 and 2003 c 394 s 1 are each amended to read as follows:

(1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use. The rates and charges authorized in this section may be used to coordinate and provide low-cost or no-cost wastewater disposal services for vehicles used as residences, in compliance with the restrictions of Article VIII, section 7 of the state Constitution.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to the various customers;

(b) The location of the various customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(d) The different character of the service and facilities furnished various customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

**Sec.**  RCW 90.48.120 and 1992 c 73 s 25 are each amended to read as follows:

(1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter or chapter 90.56 RCW, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of such determination, such person shall file with the department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail. A person described in section 3 of this act that creates a substantial potential to violate the provisions of this chapter may alternatively, or in addition to, receive notification of a determination from a permittee consistent with the provisions of section 3 of this act or from the department or Washington state patrol consistent with RCW 90.48.144(2).

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter 90.56 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

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