

SENATE BILL REPORT

SB 5518

As Reported by Senate Committee On:
Environment, Water & Energy, February 17, 2009

Title: An act relating to petroleum pollution in storm water.

Brief Description: Reducing the amount of petroleum pollution in storm water.

Sponsors: Senators Pridemore, Rockefeller, Fairley, Marr, McDermott, Regala, Fraser, Murray, Jarrett, Shin and Kohl-Welles.

Brief History:

Committee Activity: Environment, Water & Energy: 2/06/09, 2/17/09 [w/oRec-WM, DNP].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That it be referred without recommendation and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Hatfield, Marr and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Morton.

Staff: Karen Epps (786-7424)

Background: A combination of federal, state, and local laws govern storm water management in Washington. The water quality implications of storm water runoff are addressed in the federal Clean Water Act. State water pollution control statutes also regulate water quality aspects of storm water management.

The federal Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate wastewater discharges from point sources to surface waters. The United States Environmental Protection Agency (EPA) has delegated authority to the Washington Department of Ecology (Ecology) to issue NPDES permits. The federal CWA and implementing EPA storm water regulations established two phases for NPDES permits to control storm water discharges from certain industries and

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.

construction sites, and from municipalities operating municipal separate storm sewer systems.

In addition to NPDES permit responsibilities, Ecology administers a state program regulating discharges from certain commercial, industrial, or municipal operations to ground or to publicly-owned treatment plants. Washington statute requires all pollution dischargers to use all known, available, and reasonable treatment methods to prevent and control water pollution.

Local governments have responsibility under federal and state law to manage storm water and authority under state law to construct and operate storm water management systems. Local governments may be subject to storm water management regulations through both the federal NPDES permit program and state pollution discharge permits.

Summary of Original Bill: A fee of \$1.50 per barrel of petroleum products is imposed on petroleum products that contribute to storm water pollution at the point of first possession of those products. "Petroleum products that contribute to storm water pollution" is defined as asphalt and road oil, lubricants, motor gasoline, and residual fuel oil, and any other petroleum substance that Ecology determines contributes to storm water pollution in the state.

This fee must be deposited into the Water Pollution Account with the money to be used for mitigating and preventing pollution in surface water runoff that is caused by petroleum products. Forty percent of the money will be made available to local governments as grants to fund capital projects that address petroleum contamination of storm water. To be eligible for these grants, local governments must provide 50 percent of the project costs from other non-state sources.

An additional 40 percent of the money must be made available to local governments as grants for projects that address petroleum contamination of storm water. This portion of the money must be prioritized for low-impact development retrofit projects. Project proponents must demonstrate that the project will have clear and substantial ecological or water quality benefits and that the project is an identified priority based on analysis of needs throughout the jurisdiction, basin, or watershed.

The remaining 20 percent of the money must be allocated either as grants to fund capital projects or as grants for projects that address petroleum contamination of storm water specifically to the highest priority projects based upon ecological and water quality benefits determined by Ecology.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Proposed Substitute):

- Requires that no more than 3 percent of the money may be used to administer the grant program on a continuing basis.
- Requires Ecology to initiate the grant application process by July 1, 2010.
- Adds definitions of "barrel" and "control."

- Changes the definition of "Petroleum products that contribute to storm water pollution" to exclude dyed special fuel and clear special fuel and includes motor vehicle fuel and motor diesel fuel.
- Requires Ecology to adopt rules governing the collection of the fees no later than January 1, 2010.
- Requires the fee be imposed effective January 1, 2010.

Appropriation: None.

Fiscal Note: Requested on January 26, 2009.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: This bill will provide solutions to a large problem. This fee is designed to make this fair as these products are causing substantial damage. Local governments do not have the wherewithal to handle the damage being caused by storm water runoff. The shellfish industry needs clean water to survive and the petroleum products that enter watershed from storm water runoff are causing damage to the industry. Petroleum products play a major role in the problem of storm water runoff. This fee is fair and appropriate and will make a difference for local governments. This is a critical element to clean up Puget Sound. This bill tried to levy the fee on a major source of the pollution. Extensive habitat protections are washed away by storm water.

CON: The nexus from petroleum contribution to storm water is overstated. Ecology is still developing its toxics data on storm water and has not yet apportioned the various impacts. It is a significant portion in terms of the volume, but the toxicity levels have not been completed. There are 14 different sources of storm water contributors. There is a question of why the fee is not assigned to the various other sources. If it is a fee, there is a question of why the bill exempts other transportation purposes, such as diesel for farm use. The proposed fee is in reality a tax proposal. A tax is imposed for the purpose of raising general government revenue, whereas a fee is imposed to regulate an activity and cover the costs of regulating that activity.

OTHER: Storm water runoff is one of the biggest threats to Puget Sound. Storm water runoff is not being addressed sufficiently and this bill is one step towards addressing the issue. Snohomish County has an estimated 126,000 dogs living in the county producing an estimated 20 tons of dog waste, roughly the amount of waste produced by a town of 32,000 people.

Persons Testifying: PRO: Mo McBroom, Washington Environmental Council; Paul Roberts, citizen; Dan Wrye, Pierce County Surface Water Management; Bill Dewey, Taylor Shellfish; Dave Williams, Association of Cities; Bill Dairey, CM2H Hill; Bruce Wishart, People for Puget Sound; Van Collins, Associated General Contractors; Ric Abbett, Washington Council of Trout Unlimited; Elizabeth Davis, League of Women Voters of Washington; Bill Robinson, The Nature Conservancy.

CON: Greg Hanon, Western States Petroleum Association.

OTHER: Michael Grayum, Puget Sound Partnership; Josh Baldi, Ecology.