
SENATE BILL 5518

State of Washington

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2009 Regular Session

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

Read first time 01/26/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to petroleum pollution in storm water; adding new
2 sections to chapter 90.48 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) Contaminated storm water runoff is a
5 major water pollution problem in the state. It impacts rivers,
6 aquifers, lakes, and streams across Washington. Addressing storm water
7 is one of the Puget Sound partnership's top strategic priorities for
8 Puget Sound recovery.

9 (2) The storm water problem is a function of both increased runoff
10 due to impervious surfaces and to the toxic substances that pollute the
11 runoff.

12 (3) Petroleum is the single largest contributor to storm water
13 pollution. Contamination from petroleum products in surface water
14 runoff accounts for ninety percent of the pollution load in Puget
15 Sound. Storm water carries between six million three hundred thousand
16 and eight million gallons of petroleum into Puget Sound every year.

17 (4) Petroleum and petroleum byproducts pollute storm water through
18 a multitude of diverse and diffuse pathways. Combustion of gasoline,
19 diesel, residual fuel oil, and other petroleum products emit pollutants

1 such as hydrocarbons, polycyclic aromatic hydrocarbons, zinc, and
2 arsenic, which then disperse and depose on the ground. Petroleum-based
3 chemicals leach from substances such as paving asphalt and roofing
4 materials. Oil and grease drip from vehicles and equipment onto roads
5 and parking lots. When rainwater flows across impervious surfaces,
6 these contaminants are mobilized and transported to water bodies.

7 (5) The federal government and the state of Washington have
8 identified remediation to storm water runoff through national pollutant
9 discharge elimination system phase I and II requirements for the state
10 and local jurisdictions. In addition, impacts from polluted storm
11 water may be mitigated through retrofit projects for existing
12 infrastructure.

13 (6) Current funding for addressing the direct effects of polluted
14 storm water is insufficient to meet existing needs. That funding is
15 raised largely by local governments and is disproportionately born by
16 fees levied on individual developers and property owners.

17 (7) It is the intent of the legislature to impose a burden offset
18 charge, a regulatory fee on entities that cause petroleum products to
19 be present in the state, in order to allocate and recover the
20 proportional costs of the public programs necessary to address the
21 negative impacts from this substance on the state's waters.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW
23 to read as follows:

24 (1) The water pollution account is created in the state treasury.
25 All fees collected under section 3 of this act must be deposited in the
26 account. Moneys in the account may be spent only after appropriation.
27 Expenditures from the account may be used only for mitigating and
28 preventing pollution by petroleum products of surface water runoff.

29 (2) Forty percent of the moneys from the account must be allocated
30 through a competitive grant process to local governments to fund
31 capital projects that address petroleum contamination of storm water
32 through the implementation of the national pollutant discharge
33 elimination system programs permitted under this chapter. To be
34 eligible, local governments must provide fifty percent of project costs
35 from other nonstate fund sources.

36 (3) Forty percent of the moneys from the account must be allocated
37 through a competitive grant process open to local governments for

1 retrofit projects that address petroleum contamination of storm water.
2 The moneys must be prioritized for low-impact development retrofit
3 projects, but moneys may be awarded for other retrofit projects if the
4 site does not lend itself to low-impact development techniques. In
5 order to qualify for funding, project proponents must demonstrate the
6 following:

- 7 (a) Clear and substantial ecological or water quality benefits; and
- 8 (b) The project is an identified priority based on an analysis of
9 needs throughout the jurisdiction, basin, or watershed.

10 (4) Twenty percent of the money from the account must be allocated
11 by the department to projects under subsection (2) or (3) of this
12 section and must be allocated to the highest priority projects based
13 upon ecological and water quality benefits determined by the
14 department. For projects qualifying under this subsection, moneys may
15 be allocated to meet the matching requirements under subsection (2) of
16 this section to jurisdictions that demonstrate economic hardship in
17 meeting the matching requirement.

18 (5) The department shall develop criteria for administering the
19 program and ranking projects for funding. In developing these
20 criteria, the department shall consult with the Puget Sound
21 partnership. The department shall endeavor to distribute the moneys
22 within each geographic region of the state in proportion to the
23 severity of impacts on the state's waters from petroleum contamination.

24 (6) Administration of the grant program must be paid for out of the
25 water pollution account and no more than one percent of the moneys from
26 the account may be used to administer the grant program.

27 (7) The department shall initiate the grant application process by
28 December 30, 2009.

29 (8) By December 1, 2014, the department shall report to the
30 legislature on the progress of the program and the adequacy of the
31 percentage allocations specified in subsections (2), (3), and (4) of
32 this section.

33 (9) The definitions in this subsection apply throughout this
34 section unless the context clearly requires otherwise.

35 (a) "Low impact development" means storm water source reduction
36 techniques applied at the parcel and subdivision level that emphasizes

1 conservation and use of on-site natural features integrated with
2 engineered, small-scale hydrologic controls to more closely mimic
3 predevelopment hydrologic functions.

4 (b) "Retrofit" means the redesign and construction of storm water
5 management systems for existing development at the parcel or
6 subdivision level.

7 (c) "Capital project" means the capital project, including the
8 construction and associated costs, described in capital budget
9 instructions issued by the office of financial management.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 (1) Effective July 1, 2009, a fee is imposed on the first
13 possession of petroleum products that contribute to storm water
14 pollution for the purpose of offsetting the harm caused by petroleum
15 pollution of storm water in this state. The fee is one dollar and
16 fifty cents per barrel of petroleum product that contributes to storm
17 water pollution.

18 (2) Fees collected under this section must be deposited in the
19 water pollution account created in section 2 of this act and applied
20 solely for the pollution prevention and mitigation purposes permitted
21 under that section.

22 (3) The fee must be collected by the department. The department
23 may enter into agreements with other state agencies to facilitate the
24 most efficient collection system.

25 (4) It is the intent of this section to impose a fee only once for
26 petroleum products that contribute to storm water pollution that are
27 possessed in this state. Accordingly, the fee is imposed on the first
28 possession of such products. The fee is not imposed on the possession
29 of small amounts of petroleum products that is first possessed by a
30 consumer or by a retailer for the purpose of sale to ultimate
31 consumers.

32 (5) Petroleum products exported from or sold for export from the
33 state are not subject to the fee imposed under this section.

34 (6) The definitions in this subsection apply throughout this
35 section unless the context clearly requires otherwise.

36 (a) "Petroleum products that contribute to storm water pollution"
37 means asphalt and road oil, lubricants, motor gasoline, and residual

1 fuel oil, and any other petroleum substance that the department
2 determines contributes to storm water pollution in the state. The term
3 does not include crude oil, aviation gasoline, jet fuel, home heating
4 oil, or red dyed diesel used for agricultural purposes.

5 (b) "Possession" means the act of taking control of the petroleum
6 product located within this state, whether the person taking control
7 does so by bringing, receiving, creating, or extracting the petroleum
8 product in this state, and includes both actual and constructive
9 possession. "Actual possession" occurs when the person with control
10 obtains physical possession. "Constructive possession" occurs when the
11 person with control does not obtain physical possession. "Control"
12 means the power to sell or use the petroleum product or to authorize
13 the sale or use by another.

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