

SHB 1614 - H AMD 889

By Representative Ormsby

ADOPTED AS AMENDED 04/25/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that contaminated
4 storm water runoff is a major water pollution problem in the state
5 creating a significant burden on the rivers, aquifers, lakes, and
6 streams across Washington. In addition, mitigating the burdens of
7 storm water and storm water pollution is one of the Puget Sound
8 partnership's top strategic priorities for Puget Sound recovery.

9 (2) The legislature recognizes that the burden of storm water
10 pollution is a function of both increased volumes of storm water runoff
11 due to the expansion of impervious surfaces and the toxic substances
12 that pollute the runoff. Local governments may address the burdens
13 created by increased impervious surface through storm water utility
14 fees, but it has been difficult to regulate the toxic substances that
15 contaminate storm water runoff and result in nonpoint source pollution.

16 (3) The legislature finds that contamination from one category of
17 toxic substances, petroleum products, accounts for a significant
18 portion of the total pollution load in Puget Sound and other areas in
19 the state.

20 (4) The legislature finds that, although future expenditures for
21 required storm water remediation have not been fully quantified,
22 existing information shows that near-term costs for storm water permit
23 compliance and retrofit projects are in excess of one billion dollars.
24 To meet federal storm water permit requirements and complete other
25 storm water projects necessary to meet water quality recovery goals,
26 more than two hundred fifty million dollars will need to be spent by
27 cities, counties, ports, and the state department of transportation
28 every year. The fee imposed in section 3 of this act on petroleum
29 products, which account for between forty-five percent and sixty-five

1 percent of storm water pollution, will generate less than half of the
2 minimum of the annual costs of necessary storm water remediation
3 projects.

4 (5) The legislature finds that the burden of storm water pollution
5 from petroleum products is difficult to offset because the source of
6 pollution is not a single physical point, but occurs wherever the
7 petroleum products are purchased, consumed, or used. Nonpoint
8 pollution sources like petroleum and petroleum byproducts contaminate
9 storm water through a multitude of pathways. Combustion of gasoline,
10 diesel, residual fuel oil, and other petroleum products emit pollutants
11 such as hydrocarbons, polycyclic aromatic hydrocarbons, zinc, and
12 arsenic, which then disperse and depose on the ground. Petroleum-based
13 chemicals leach from substances like paving asphalt. Oil and grease
14 drip from vehicles and equipment onto roads and parking lots. When
15 rainwater flows across impervious surfaces, these contaminants are
16 mobilized and transported to water bodies.

17 (6) The legislature finds that the possession of petroleum and
18 petroleum byproducts such as asphalt and road oil, lubricants, motor
19 vehicle fuel, and motor diesel fuel directly contributes to storm water
20 contamination because once these products are present in the state, the
21 immediate, foreseeable, and unavoidable consequences of their
22 distribution and use are emissions that significantly contribute to
23 storm water pollution.

24 (7) The legislature finds that the federal government and the state
25 of Washington have identified remediation of storm water runoff through
26 national pollutant discharge elimination system phase I and II as a
27 requirement for the state and local jurisdictions. Impacts from the
28 polluted storm water may be mitigated through retrofit projects for
29 existing infrastructure.

30 (8) The legislature finds that resources needed to offset the
31 direct burdens of storm water polluted by these substances are
32 insufficient to meet existing needs. Existing funding is raised
33 largely by local governments and is disproportionately borne by fees
34 levied on individual developers and property owners.

35 (9) Finally, the legislature finds that imposing a fee on the first
36 in-state possession of petroleum products that contribute to nonpoint
37 storm water pollution is the most administratively feasible method of
38 regulation that proportionally allocates the costs of offsetting the

1 burdens that these products place on the environment. The legislature
2 therefore authorizes a fee to regulate nonpoint source pollution from
3 petroleum products and offset the burdens that such nonpoint pollution
4 places on the environment and the waters of the state.

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

7 (1) The water pollution account is created in the state treasury.
8 All fees collected under section 3 of this act must be deposited in the
9 account. Moneys in the account may be spent only after appropriation.
10 Expenditures from the account must be used on activities or capital
11 projects that mitigate or prevent storm water pollution by petroleum
12 products or storm water pollution associated with petroleum products.

13 (2) After deducting the department's administrative costs
14 associated with collecting the fees and administering a competitive
15 grant process:

16 (a) Approximately forty percent of the moneys must be allocated
17 through the grant process to local governments to fund activities or
18 capital projects that address petroleum contamination of storm water
19 through the implementation of the national pollutant discharge
20 elimination system programs permitted under this chapter. To be
21 eligible, local governments must provide fifty percent of project or
22 activity costs from other nonstate fund sources. To qualify for
23 funding, applicants must also demonstrate the following:

24 (i) A clear relationship between petroleum products that contribute
25 to storm water pollution and the project's or activity's outcomes; and

26 (ii) For project proposals, that the project is an identified
27 priority based on an analysis of ecological or water quality needs
28 throughout the jurisdiction, basin, or watershed.

29 (b) Approximately forty percent of the moneys must be allocated
30 through the grant process to local governments for retrofit projects
31 that address petroleum contamination of storm water. The moneys must
32 be prioritized for projects that utilize low-impact development
33 retrofit strategies, but moneys may be awarded for other retrofit
34 projects if the site does not lend itself to low-impact development
35 techniques. After December 31, 2012, in order to qualify for funding,
36 applicants must demonstrate the following:

1 (i) A clear relationship between petroleum products that contribute
2 to storm water pollution and the project's outcomes; and

3 (ii) That the project is an identified priority based on an
4 analysis of ecological or water quality needs throughout the
5 jurisdiction, basin, or watershed.

6 (c) Approximately ten percent of the money must be allocated as
7 grants to the department of transportation to fund activities or
8 capital projects that address petroleum contamination of storm water
9 related to existing transportation infrastructure through the
10 implementation of the department of transportation's national pollutant
11 discharge elimination system programs permitted under this chapter. To
12 qualify for funding, the department must demonstrate the following:

13 (i) A clear relationship between petroleum products that contribute
14 to storm water pollution and the project's or activity's outcomes; and

15 (ii) For project proposals, that the project is an identified
16 priority based on an analysis of ecological or water quality needs
17 throughout the jurisdiction, basin, or watershed.

18 (d) Approximately ten percent of the money must be allocated
19 through either existing storm water grant programs or the grant process
20 to projects under (a) or (b) of this subsection and to the highest
21 priority projects based upon ecological and water quality benefits
22 determined by the department. For projects qualifying under this
23 subsection (2)(d), moneys may be allocated to meet the matching
24 requirements under (a) of this subsection to jurisdictions that
25 demonstrate economic hardship in meeting the matching requirement. To
26 qualify for funding, applicants must also demonstrate the following:

27 (i) A clear relationship between petroleum products that contribute
28 to storm water pollution and the project's outcomes; and

29 (ii) That the project is an identified priority based on an
30 analysis of ecological or water quality needs throughout the
31 jurisdiction, basin, or watershed.

32 (3) The department shall develop criteria for administering the
33 program and ranking projects for funding. In developing criteria
34 applicable to projects in the Puget Sound basin, the department shall
35 consult with the Puget Sound partnership. All projects approved for
36 funding must demonstrate the potential to achieve clear ecological or
37 water quality benefits. The department shall endeavor to distribute

1 the moneys within each geographic region of the state in proportion to
2 the severity of impacts on the state's waters from petroleum
3 contamination.

4 (4) Administration of the grant program, including the collection
5 of fees under section 3 of this act, must be paid for out of the water
6 pollution account. Notwithstanding program implementation costs, no
7 more than three percent of the moneys from the account may be used to
8 administer the grant program on a continuing basis.

9 (5) The department shall initiate the grant application process by
10 July 1, 2010.

11 (6) By December 1, 2011, and every two years thereafter, the
12 department shall report to the governor and the appropriate committees
13 of the legislature on the progress of the program and the suitability
14 of the percentage allocations specified in subsection (2)(a) through
15 (d) of this section.

16 (7) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Low-impact development" means a storm water management and
19 land development strategy applied at the parcel and subdivision level
20 that emphasizes conservation and use of on-site natural features
21 integrated with engineered, small-scale hydrologic controls to more
22 closely mimic predevelopment hydrologic functions.

23 (b) "Retrofit" means the renovation of existing development to
24 improve or eliminate storm water problems associated with the site.

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

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

30 (1) Effective January 1, 2010, a fee is imposed on the first
31 possession of petroleum products that contribute to storm water
32 pollution, as defined in subsection (6) of this section, for the
33 purpose of offsetting the burden caused by petroleum pollution of storm
34 water in this state. The fee is one dollar and fifty cents per barrel
35 of petroleum product that contributes to storm water pollution.

36 (2) Fees collected under this section must be deposited in the
37 water pollution account created in section 2 of this act and applied

1 solely for the pollution prevention and mitigation purposes permitted
2 under section 2 of this act and for the administration of the program
3 required under section 2 of this act.

4 (3) The fee must be collected by the department. No later than
5 January 1, 2010, the department shall adopt rules governing the
6 collection of the fees. The department may enter into agreements with
7 other state agencies to facilitate the most efficient collection
8 system.

9 (4) It is the intent of this section to impose a fee only once for
10 petroleum products that contribute to storm water pollution that are
11 possessed in this state. Accordingly, the fee is imposed on the first
12 possession of such products. The fee is not imposed on the possession
13 of small amounts of petroleum products that is first possessed by a
14 consumer or by a retailer for the purpose of sale to ultimate
15 consumers.

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

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

20 (a) "Barrel" means a unit of measurement of volume equal to forty-
21 two United States gallons of petroleum product.

22 (b) "Control" means the power to sell or use the petroleum product
23 or to authorize the sale or use by another.

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

31 (d) "Possession" means the act of taking control of the petroleum
32 product located within this state, whether the person taking control
33 does so by bringing, receiving, creating, or extracting the petroleum
34 product in this state, and includes both actual and constructive
35 possession. "Actual possession" occurs when the person with control
36 obtains physical possession. "Constructive possession" occurs when the
37 person with control does not obtain physical possession."

1 Correct the title.

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