
ENGROSSED SUBSTITUTE HOUSE BILL 1614

State of Washington

61st Legislature

2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Ormsby, Priest, Rodne, Eddy, Hunt, Pettigrew, Upthegrove, Blake, Nelson, Appleton, Pedersen, Simpson, Darneille, Williams, Hudgins, Dunshee, McCoy, and Wood)

READ FIRST TIME 02/20/09.

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

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

17 (3) The legislature finds that contamination from one category of
18 toxic substances, petroleum products, accounts for a significant

1 portion of the total pollution load in Puget Sound and other areas in
2 the state.

3 (4) The legislature finds that, although future expenditures for
4 required storm water remediation have not been fully quantified,
5 existing information shows that near-term costs for storm water permit
6 compliance and retrofit projects are in excess of one billion dollars.
7 To meet federal storm water permit requirements and complete other
8 storm water projects necessary to meet water quality recovery goals,
9 more than two hundred fifty million dollars will need to be spent by
10 cities, counties, ports, and the state department of transportation
11 every year. The fee imposed in section 3 of this act on petroleum
12 products, which account for between forty-five percent and sixty-five
13 percent of storm water pollution, will generate less than half of the
14 minimum of the annual costs of necessary storm water remediation
15 projects.

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

29 (6) The legislature finds that the possession of petroleum and
30 petroleum byproducts such as asphalt and road oil, lubricants, motor
31 vehicle fuel, and motor diesel fuel directly contributes to storm water
32 contamination because once these products are present in the state, the
33 immediate, foreseeable, and unavoidable consequences of their
34 distribution and use are emissions that significantly contribute to
35 storm water pollution.

36 (7) The legislature finds that the federal government and the state
37 of Washington have identified remediation of storm water runoff through
38 national pollutant discharge elimination system phase I and II as a

1 requirement for the state and local jurisdictions. Impacts from the
2 polluted storm water may be mitigated through retrofit projects for
3 existing infrastructure.

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

9 (9) Finally, the legislature finds that imposing a fee on the first
10 in-state possession of petroleum products that contribute to nonpoint
11 storm water pollution is the most administratively feasible method of
12 regulation that proportionally allocates the costs of offsetting the
13 burdens that these products place on the environment. The legislature
14 therefore authorizes a fee to regulate nonpoint source pollution from
15 petroleum products and offset the burdens that such nonpoint pollution
16 places on the environment and the waters of the state.

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

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

25 (2) After deducting the department's administrative costs
26 associated with collecting the fees and administering a competitive
27 grant process:

28 (a) Approximately forty percent of the moneys must be allocated
29 through the grant process to local governments to fund activities or
30 capital projects that address petroleum contamination of storm water
31 through the implementation of the national pollutant discharge
32 elimination system programs permitted under this chapter. To be
33 eligible, local governments must provide fifty percent of project or
34 activity costs from other nonstate fund sources. To qualify for
35 funding, applicants must also demonstrate the following:

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

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

4 (b) Approximately forty percent of the moneys must be allocated
5 through the grant process to local governments for retrofit projects
6 that address petroleum contamination of storm water. The moneys must
7 be prioritized for projects that utilize low-impact development
8 retrofit strategies, but moneys may be awarded for other retrofit
9 projects if the site does not lend itself to low-impact development
10 techniques. To qualify for funding, applicants must demonstrate the
11 following:

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

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

17 (c) Approximately ten percent of the money must be allocated as
18 grants to the department of transportation to fund activities or
19 capital projects that address petroleum contamination of storm water
20 related to existing transportation infrastructure through the
21 implementation of the department of transportation's national pollutant
22 discharge elimination system programs permitted under this chapter. To
23 qualify for funding, the department must 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 (d) Approximately ten percent of the money must be allocated
30 through either existing storm water grant programs or the grant process
31 to projects under (a) or (b) of this subsection and to the highest
32 priority projects based upon ecological and water quality benefits
33 determined by the department. For projects qualifying under this
34 subsection (2)(d), moneys may be allocated to meet the matching
35 requirements under (a) of this subsection to jurisdictions that
36 demonstrate economic hardship in meeting the matching requirement. To
37 qualify for funding, applicants must also 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 (3) The department shall develop criteria for administering the
7 program and ranking projects for funding. In developing criteria
8 applicable to projects in the Puget Sound basin, the department shall
9 consult with the Puget Sound partnership. All projects approved for
10 funding must demonstrate the potential to achieve clear ecological or
11 water quality benefits. The department shall endeavor to distribute
12 the moneys within each geographic region of the state in proportion to
13 the severity of impacts on the state's waters from petroleum
14 contamination.

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

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

22 (6) By December 1, 2011, and every two years thereafter, the
23 department shall report to the governor and the appropriate committees
24 of the legislature on the progress of the program and the suitability
25 of the percentage allocations specified in subsection (2)(a) through
26 (d) of this section.

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

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

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

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

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

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

9 (2) Fees collected under this section must be deposited in the
10 water pollution account created in section 2 of this act and applied
11 solely for the pollution prevention and mitigation purposes permitted
12 under section 2 of this act and for the administration of the program
13 required under section 2 of this act.

14 (3) The fee must be collected by the department. No later than
15 January 1, 2010, the department shall adopt rules governing the
16 collection of the fees. The department may enter into agreements with
17 other state agencies to facilitate the most efficient collection
18 system.

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

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

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

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

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

34 (c) "Petroleum products that contribute to storm water pollution"
35 means asphalt and road oil, lubricants, motor vehicle fuel, motor
36 diesel fuel, and residual fuel oil, and any other petroleum substance
37 that the department determines contributes to storm water pollution in

1 the state. The term does not include crude oil, aviation gasoline, jet
2 fuel, home heating oil, dyed special fuel, or clear special fuel used
3 for agricultural purposes.

4 (d) "Possession" means the act of taking control of the petroleum
5 product located within this state, whether the person taking control
6 does so by bringing, receiving, creating, or extracting the petroleum
7 product in this state, and includes both actual and constructive
8 possession. "Actual possession" occurs when the person with control
9 obtains physical possession. "Constructive possession" occurs when the
10 person with control does not obtain physical possession.

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