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**SUBSTITUTE HOUSE BILL 1614**

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**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) 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 a significant portion of the total pollution load  
15 in Puget Sound.

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

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

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

12 (6) The Puget Sound partnership's action agenda calls for improved  
13 storm water management by implementing national pollutant discharge  
14 elimination system permits, providing financial and technical  
15 assistance to communities, advancing the use of low-impact development  
16 approaches, and prioritizing and implementing storm water retrofits.

17 (7) Current funding for addressing the direct effects of polluted  
18 storm water is insufficient to meet existing needs. That funding is  
19 raised largely by local governments and is disproportionately borne by  
20 fees levied on individual developers and property owners.

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

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

28 (1) The water pollution account is created in the state treasury.  
29 All fees collected under section 3 of this act must be deposited in the  
30 account. Moneys in the account may be spent only after appropriation.  
31 Expenditures from the account may be used only for mitigating or  
32 preventing storm water pollution by petroleum products or storm water  
33 pollution associated with petroleum products.

34 (2) After deducting the department's administrative costs  
35 associated with collecting the fees and administering a competitive  
36 grant process:

1 (a) Approximately forty percent of the moneys must be allocated  
2 through the grant process to local governments to fund capital projects  
3 or activities that address petroleum contamination of storm water  
4 through the implementation of the national pollutant discharge  
5 elimination system programs permitted under this chapter. To be  
6 eligible, local governments must provide fifty percent of project or  
7 activity costs from other nonstate fund sources.

8 (b) Approximately forty percent of the moneys must be allocated  
9 through the grant process to local governments for retrofit projects  
10 that address petroleum contamination of storm water. The moneys must  
11 be prioritized for low-impact development retrofit projects, but moneys  
12 may be awarded for other retrofit projects if the site does not lend  
13 itself to low-impact development techniques. After December 31, 2012,  
14 in order to qualify for funding, project proponents must demonstrate  
15 the following:

16 (i) Clear and substantial ecological or water quality benefits; and

17 (ii) The project is an identified priority based on an analysis of  
18 needs throughout the jurisdiction, basin, or watershed.

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

27 (3) The department shall develop criteria for administering the  
28 program and ranking projects for funding. In developing these  
29 criteria, the department shall consult with the Puget Sound  
30 partnership. The department shall endeavor to distribute the moneys  
31 within each geographic region of the state in proportion to the  
32 severity of impacts on the state's waters from petroleum contamination.

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

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

3 (6) By December 1, 2014, the department shall report to the  
4 legislature on the progress of the program and the adequacy of the  
5 percentage allocations specified in subsection (2)(a) through (c) of  
6 this section.

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

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

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

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

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

21 (1) Effective January 1, 2010, a fee is imposed on the first  
22 possession of petroleum products that contribute to storm water  
23 pollution for the purpose of offsetting the harm caused by petroleum  
24 pollution of storm water in this state. The fee is one dollar and  
25 fifty cents per barrel of petroleum product that contributes to storm  
26 water pollution.

27 (2) Fees collected under this section must be deposited in the  
28 water pollution account created in section 2 of this act and applied  
29 solely for the pollution prevention and mitigation purposes permitted  
30 under section 2 of this act and for the administration of the program  
31 required under section 2 of this act.

32 (3) The fee must be collected by the department. No later than  
33 January 1, 2010, the department shall adopt rules governing the  
34 collection of the fees. The department may enter into agreements with  
35 other state agencies to facilitate the most efficient collection  
36 system.

1 (4) It is the intent of this section to impose a fee only once for  
2 petroleum products that contribute to storm water pollution that are  
3 possessed in this state. Accordingly, the fee is imposed on the first  
4 possession of such products. The fee is not imposed on the possession  
5 of small amounts of petroleum products that is first possessed by a  
6 consumer or by a retailer for the purpose of sale to ultimate  
7 consumers.

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

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

12 (a) "Barrel" means a unit of measurement of volume equal to forty-  
13 two United States gallons of crude oil or petroleum product.

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

16 (c) "Petroleum products that contribute to storm water pollution"  
17 means asphalt and road oil, lubricants, motor vehicle fuel, motor  
18 diesel fuel, and residual fuel oil, and any other petroleum substance  
19 that the department determines contributes to storm water pollution in  
20 the state. The term does not include crude oil, aviation gasoline, jet  
21 fuel, home heating oil, dyed special fuel, or clear special fuel used  
22 for agricultural purposes.

23 (d) "Possession" means the act of taking control of the petroleum  
24 product located within this state, whether the person taking control  
25 does so by bringing, receiving, creating, or extracting the petroleum  
26 product in this state, and includes both actual and constructive  
27 possession. "Actual possession" occurs when the person with control  
28 obtains physical possession. "Constructive possession" occurs when the  
29 person with control does not obtain physical possession.

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