

SHB 1614 - H AMD 869

By Representative Ormsby

WITHDRAWN 04/25/2009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 the burden of storm water pollution
21 from petroleum products is difficult to offset because the source of
22 pollution is not a single physical point, but occurs wherever the
23 petroleum products are purchased, consumed, or used. Nonpoint
24 pollution sources like petroleum and petroleum byproducts contaminate
25 storm water through a multitude of pathways. Combustion of gasoline,
26 diesel, residual fuel oil, and other petroleum products emit pollutants
27 such as hydrocarbons, polycyclic aromatic hydrocarbons, zinc, and
28 arsenic, which then disperse and depose on the ground. Petroleum-based
29 chemicals leach from substances like paving asphalt. Oil and grease

1 drip from vehicles and equipment onto roads and parking lots. When
2 rainwater flows across impervious surfaces, these contaminants are
3 mobilized and transported to water bodies.

4 (5) The legislature finds that the possession of petroleum and
5 petroleum byproducts such as asphalt and road oil, lubricants, motor
6 vehicle fuel, and motor diesel fuel directly contributes to storm water
7 contamination because once these products are present in the state, the
8 immediate, foreseeable, and unavoidable consequences of their
9 distribution and use are emissions that significantly contribute to
10 storm water pollution.

11 (6) The legislature finds that the federal government and the state
12 of Washington have identified remediation of storm water runoff through
13 national pollutant discharge elimination system phase I and II as a
14 requirement for the state and local jurisdictions. Impacts from the
15 polluted storm water may be mitigated through retrofit projects for
16 existing infrastructure.

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

22 (8) Finally, the legislature finds that imposing a fee on the first
23 in-state possession of petroleum products that contribute to nonpoint
24 storm water pollution is the most administratively feasible method of
25 regulation that proportionally allocates the costs of offsetting the
26 burdens that these products place on the environment. The legislature
27 therefore authorizes a fee to regulate nonpoint source pollution from
28 petroleum products and offset the burdens that such nonpoint pollution
29 places on the environment and the waters of the state.

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

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

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

4 (a) Approximately forty percent of the moneys must be allocated
5 through the grant process to local governments to fund activities or
6 capital projects that address petroleum contamination of storm water
7 through the implementation of the national pollutant discharge
8 elimination system programs permitted under this chapter. To be
9 eligible, local governments must provide fifty percent of project or
10 activity costs from other nonstate fund sources. To qualify for
11 funding, applicants must also demonstrate the following:

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

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

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

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

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

30 (c) Approximately ten percent of the money must be allocated as
31 grants to the department of transportation to fund activities or
32 capital projects that address petroleum contamination of storm water
33 related to existing transportation infrastructure through the
34 implementation of the department of transportation's national pollutant
35 discharge elimination system programs permitted under this chapter. To
36 qualify for funding, the department must demonstrate the following:

37 (i) A clear relationship between petroleum products that contribute
38 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 (d) Approximately ten percent of the money must be allocated
5 through either existing storm water grant programs or the grant process
6 to projects under (a) or (b) of this subsection and to the highest
7 priority projects based upon ecological and water quality benefits
8 determined by the department. For projects qualifying under this
9 subsection (2)(d), moneys may be allocated to meet the matching
10 requirements under (a) of this subsection to jurisdictions that
11 demonstrate economic hardship in meeting the matching requirement. To
12 qualify for funding, applicants must also demonstrate the following:

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

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

18 (3) The department shall develop criteria for administering the
19 program and ranking projects for funding. In developing criteria
20 applicable to projects in the Puget Sound basin, the department shall
21 consult with the Puget Sound partnership. All projects approved for
22 funding must demonstrate the potential to achieve clear ecological or
23 water quality benefits. The department shall endeavor to distribute
24 the moneys within each geographic region of the state in proportion to
25 the severity of impacts on the state's waters from petroleum
26 contamination.

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

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

34 (6) By December 1, 2014, the department shall report to the
35 legislature on the progress of the program and the adequacy of the
36 percentage allocations specified in subsection (2)(a) through (d) of
37 this section.

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

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

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

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

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

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

21 (2) Fees collected under this section must be deposited in the
22 water pollution account created in section 2 of this act and applied
23 solely for the pollution prevention and mitigation purposes permitted
24 under section 2 of this act and for the administration of the program
25 required under section 2 of this act.

26 (3) The fee must be collected by the department. No later than
27 January 1, 2010, the department shall adopt rules governing the
28 collection of the fees. The department may enter into agreements with
29 other state agencies to facilitate the most efficient collection
30 system.

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

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

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

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

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

9 (c) "Petroleum products that contribute to storm water pollution"
10 means asphalt and road oil, lubricants, motor vehicle fuel, motor
11 diesel fuel, and residual fuel oil, and any other petroleum substance
12 that the department determines contributes to storm water pollution in
13 the state. The term does not include crude oil, aviation gasoline, jet
14 fuel, home heating oil, dyed special fuel, or clear special fuel used
15 for agricultural purposes.

16 (d) "Possession" means the act of taking control of the petroleum
17 product located within this state, whether the person taking control
18 does so by bringing, receiving, creating, or extracting the petroleum
19 product in this state, and includes both actual and constructive
20 possession. "Actual possession" occurs when the person with control
21 obtains physical possession. "Constructive possession" occurs when the
22 person with control does not obtain physical possession."

23 Correct the title.

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