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**Ways & Means Committee**

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**HB 1735**

**Brief Description:** Concerning creating clean water jobs through storm water pollution funding.

**Sponsors:** Representatives Ormsby, Clibborn, Upthegrove, Springer, McCoy, Eddy, Dunshee, Hunt, Frockt, Moscoso, Fitzgibbon, Ryu, Sells, Pedersen, Carlyle, Appleton, Dickerson, Darneille, Lias, Billig, Roberts, Maxwell, Reykdal, Kenney, Tharinger and Stanford.

**Brief Summary of Bill**

- Authorizes the Department of Ecology to collect a 1 percent fee on the wholesale value of petroleum products, pesticides, herbicides, and fertilizers and will be assessed on the first possession of the these substances in the state.
- Allocates funds through a distribution formula to the Department of Transportation, local governments, and non-profits for projects and activities that address storm water pollution.
- Creates the Storm Water Pollution Account, expenditures from which may be used only for activities or projects that mitigate or prevent contamination of storm water by storm water pollutants.

**Hearing Date:** 2/15/11

**Staff:** Owen Rowe (786-7391).

**Background:**

Federal law.

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA defines "pollutant" broadly to include a variety of materials that may be discharged into water through human activities, construction, industrial processes, or other methods. Among other requirements, the CWA sets effluent limitations for discharges of

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pollutants into navigable waters and requires states to adopt surface water quality standards to protect public health, fish, and other aquatic life.

The CWA also manages the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater and storm water discharges. The NPDES permits are required for wastewater discharges from point sources (discernable, discrete, and confined conveyances) to surface waters. The NPDES permits also are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria.

#### State law.

The CWA authorizes the United States Environmental Protection Agency (EPA) to delegate the NPDES permit authority to designated state agencies. The EPA has delegated NPDES permit authority for Washington to the Department of Ecology (DOE).

#### **Summary of Bill:**

##### Fee on petroleum products that contribute to storm water pollution.

Beginning July 1, 2011, a Storm Water Pollution Fee consisting of 1 percent of the wholesale value of petroleum products, pesticides, herbicides, and fertilizers will be collected on the first possession of these substances in the state.

The fee must be collected quarterly by the DOE; however, the DOE may enter into agreements with other state agencies to facilitate the most efficient collection system. The fee must be deposited into the Storm Water Pollution Account (Account) created in the bill.

The DOE is authorized to adopt rules to identify additional toxic storm water pollutants to be subject to the fee that are determined to be significant contributors to storm water contamination, and may amend these rules as deemed necessary, in order to delete or add toxic storm water pollutants. The DOE may not add substances by a rule amendment more than once in a 24-month period.

Storm Water Pollution Fee Exemptions are as follows:

- any possession of fuel carried into the state in the fuel tank for the motive power of any airplane, ship, truck, or other vehicle;
- any successive possession of a toxic storm water pollutant for which the fee was previously paid and which has not been remanufactured or reprocessed in any manner, other than repackaging or recycling for beneficial reuse, since the fee was paid; and
- any possession of a toxic storm water pollutant by a person under circumstances where the product is used, for a personal or domestic purpose by that person or a relative of that person, or a person residing in the same dwelling of that person. This exemption does not apply to any possession by a person of a toxic storm water pollutant if the product is used for a business purpose.

A credit against the Storm Water Pollution Fee is allowed for:

- fees paid under this chapter on the possession of any toxic storm water pollutant that is subsequently exported for sale outside the state; and
- fees paid under this chapter on the possession of fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

#### Storm Water Pollution Account.

Money collected from the fees on petroleum products that contribute to storm water pollution must be deposited into the Account. Funds in the Account may be spent only after appropriation. Expenditures may be used only for activities or projects that mitigate or prevent contamination of storm water by toxic storm water pollutants.

#### Annual Allocation of funds.

Of the amounts appropriated to the DOE in the omnibus and capital appropriations act for storm water grant programs, the DOE may spend no more than 4 percent for its administrative costs.

Seventy-five thousand dollars must be provided to each local government that is subject to the National Pollutant Discharge Elimination System Phase I or Phase II municipal storm water requirements for the purpose of addressing contamination of storm water by toxic storm water pollutants.

Eleven million dollars must be provided to the Washington State Department of Transportation (WSDOT) and may be used only to fund transportation infrastructure projects that address toxic storm water pollution related to implementation of the WSDOT's NPDES programs permitted under the National Pollution Discharge Elimination System. These funds may not be used for construction of storm water facilities associated with new road construction that adds to or replaces and existing roadway.

Three million dollars must be provided as grants to a non-profit organization or organizations that develop storm water prevention and treatment technologies, and assist businesses and governmental entities in testing, monitoring, and adopting, and implementing new practices and technologies that will cost-effectively reduce the impact of storm water pollution.

Of the remaining funds after the previous distributions above, 45 percent of the funds must be distributed annually, by DOE through grants to local governments covered by NPDES Phase I or Phase II permits. Grants must be used to fund local government projects or activities that mitigate or prevent contamination from toxic storm water pollutants or the recontamination by toxic storm water pollutants of receiving waters previously remediated under federal or state-approved activities. Local governments must provide 50 percent of project or activity costs in matching funds from other non-state sources.

Local governments must demonstrate the following to qualify for grant funding to mitigate or prevent contamination from storm water pollutants:

- the project or activity, will address contamination of surface waters by toxic storm water pollutants covered under this bill;
- that there are water quality outcomes planned for the project or activity; and
- at least 15 percent of labor hours will be performed by apprentices for capital improvement project proposals greater than \$1 million.

Of the remaining funds after the previous distributions above, 45 percent of the funds must be allocated annually by the DOE for grants to local governments for retrofit projects that address contamination of storm water by toxic storm water pollutants, or projects that directly reduce emissions that result in air deposition of toxins from storm water pollutants. Grants for retrofit projects must be prioritized for projects that utilize low-impact development retrofit strategies; except that the grants may be awarded for other retrofit projects if the site does not lend itself to low-impact development techniques or if other retrofit techniques are shown to be more effective in terms of addressing water quality problems associated with the site or the receiving water body.

Local governments must demonstrate the following, to qualify for retrofit grant funding:

- the project or activity will address the contamination of waterways by toxic storm water pollutants covered under this chapter;
- that there are water quality outcomes planned for the project or activity; and
- for capital improvement projects greater than \$1 million, that at least 15 percent of the labor hours will be performed by apprentices.

The remaining 10 percent of funds after all of the successive distributions described above must be distributed as grants to local governments covered by the NPDES Phase I or Phase II permits. Grants to local governments that mitigate or prevent contamination from toxic storm water pollutants or the recontamination by toxic storm water pollutants of receiving waters previously remediated under federal or state-approved activities, or for retrofit projects that address contamination of storm water by toxic storm water pollutants, or projects that directly reduce emissions that result in air deposition of toxins from storm water pollutants are also allowable uses within this distribution.

Of this remaining 10 percent, funds should be allocated to the highest priority projects based on the ecological and water quality benefits as determined by the DOE, and may be allocated to meet the 50 percent local government matching requirements to local governments that demonstrate economic hardship in meeting the matching requirement.

The DOE must consult with stakeholders to develop criteria for administering the program and ranking projects for funding based on water quality benefits. In developing criteria applicable to projects in the Puget Sound basin, the DOE must consult with the Puget Sound Partnership to ensure the grants awarded will be consistent with the prioritization of the 2020 Puget Sound Action Agenda. All activities or projects approved for funding must demonstrate the potential to achieve clear ecological or water quality benefits.

The DOE must endeavor to distribute the funds within each geographic region of the state in proportion to the severity of impacts to waterways from contamination by toxic storm water pollutants.

#### Report to Legislature.

By December 1, 2013, the DOE and the Puget Sound Partnership must report to the Governor and the appropriate committees of the Legislature on the progress of the program, the water quality and other environmental quality outcomes of the storm water projects funded under this chapter, and the suitability of the levels of allocations from the Storm Water Pollution Account.

**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2011.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.