
SENATE BILL 5604

State of Washington

62nd Legislature

2011 Regular Session

By Senators Nelson, Murray, Rockefeller, Kline, Keiser, Conway, Fraser, Regala, Shin, Kohl-Welles, and Chase

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1 AN ACT Relating to creating clean water jobs through storm water
2 pollution funding; and adding a new chapter to Title 90 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 "clean water jobs act of 2011."

6 NEW SECTION. **Sec. 2.** (1) The legislature finds that contaminated
7 storm water runoff is a major water pollution problem in the state
8 creating a significant burden on the rivers, aquifers, lakes, and
9 streams across Washington. Mitigating the burdens of storm water and
10 storm water pollution is one of the Puget Sound partnership's top
11 strategic priorities for Puget Sound recovery.

12 (2) The legislature finds that activities that address storm water
13 contamination, including building and retrofitting urban, suburban, and
14 rural infrastructure, generate significant job growth, especially in
15 the construction industry and other related trades.

16 (3) The legislature recognizes that the burden of storm water
17 pollution is a function of both increased volumes of storm water runoff
18 due to the expansion of impervious surfaces and the toxic substances

1 that pollute the runoff. Local governments address the burdens created
2 by increased impervious surface through storm water utility fees, but
3 it has been difficult to regulate the toxic substances that contaminate
4 storm water runoff and result in nonpoint source pollution.

5 (4) The legislature finds that toxic storm water pollutants,
6 including petroleum products, fertilizers, herbicides and pesticides,
7 are responsible for a significant portion of the contaminated runoff
8 going into Puget Sound and other waters of the state.

9 (5) The legislature recognizes that a recent Puget Sound
10 partnership analysis shows that future expenditures for required storm
11 water remediation in the Puget Sound region alone will require billions
12 of dollars in new investments. To meet federal storm water permit
13 requirements and complete other storm water project activities
14 necessary to improve water quality recovery goals, more than two
15 hundred fifty million dollars will need to be spent by cities,
16 counties, ports, and the state department of transportation every year.

17 (6) The legislature finds that the burden of environmental
18 degradation from toxic storm water pollutants is difficult to offset
19 because the source of pollution is not a single physical point, but
20 occurs wherever the products containing these substances are purchased,
21 consumed, or used. Nonpoint sources pollute storm water through a
22 multitude of pathways. For example, combustion of gasoline, diesel,
23 residual fuel oil, and other petroleum products emit pollutants such as
24 hydrocarbons, polycyclic aromatic hydrocarbons, zinc, and arsenic,
25 which then disperse and deposit on the ground. Oil and grease drip
26 from vehicles and equipment onto roads and parking lots. Even when
27 properly applied, pesticides, herbicides, and fertilizers leave
28 residues that are environmental contaminants. When rainwater flows
29 across impervious surfaces, these contaminants are mobilized and
30 transported to water bodies.

31 (7) The legislature finds that surface runoff of fertilizers,
32 pesticides, and herbicides into water bodies changes natural ecosystems
33 by killing or damaging a wide variety of organisms. These substances
34 collect and accumulate in the food chain, becoming more harmful than
35 their ambient concentration would suggest. Fertilizer can also disrupt
36 natural biological communities by increasing plant and microbial
37 growth, damaging natural water ecosystems, and creating new pollution
38 conditions.

1 (8) The legislature further finds that the possession of petroleum
2 and petroleum by-products such as asphalt and road oil, lubricants,
3 motor vehicle fuel, and motor diesel fuel, as well as pesticides,
4 herbicides, fertilizers, and other toxic storm water pollutants,
5 directly contributes to storm water contamination. Once these products
6 are present in the state, the immediate, foreseeable, and unavoidable
7 consequences of their distribution and use are emissions and residues
8 that significantly contribute to storm water pollution.

9 (9) The legislature finds that the federal government and the state
10 of Washington have identified control of pollutants in storm water
11 runoff through national pollutant discharge elimination system phases
12 I and II municipal storm water permits as a requirement for the state
13 and local jurisdictions. Impacts from the polluted storm water may be
14 prevented or controlled through retrofit projects for existing
15 infrastructure.

16 (10) The legislature finds that current resources being devoted to
17 offset the direct burdens of waterways contaminated by toxic storm
18 water pollutants are insufficient to meet existing needs. Existing
19 funding is raised largely by local governments and is
20 disproportionately borne by fees levied on individual developers and
21 property owners.

22 (11) Therefore, the legislature determines that imposing a fee on
23 the first possession of toxic storm water pollutants that contribute to
24 nonpoint storm water contamination is an appropriate means of
25 regulation that proportionally allocates the costs of offsetting the
26 burdens that these products place upon the quality of the state's
27 waters.

28 NEW SECTION. **Sec. 3.** The definitions in this section apply
29 throughout this chapter unless the context clearly requires otherwise:

30 (1) "Department" means the department of ecology.

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

36 (3) "Pesticide" means any product required to be registered under

1 the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec.
2 136 et seq., as it exists on the effective date of this section.

3 (4) "Fertilizer" means all commercial fertilizers required to be
4 registered prior to distribution in the state under the provisions of
5 chapter 15.54 RCW.

6 (5) "Herbicide" means any product intended to prevent, destroy,
7 repel, or mitigate any weed, and which is required to be registered
8 under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C.
9 Sec. 136 et seq., as it exists on the effective date of this section.

10 (6) "Petroleum product" means any plant condensate, lubricating
11 oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel
12 motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or
13 liquefiable gases, such as butane, ethane, and propane, and every other
14 product derived from the refining of crude oil, but the term does not
15 include crude oil.

16 (7) "Possession" means the act of taking control of a substance
17 subject to the fee imposed in section 5 of this act within this state,
18 whether the person taking control does so by bringing, receiving,
19 creating, or extracting the petroleum product in this state, and
20 includes both actual and constructive possession. "Actual possession"
21 occurs when the person with control obtains physical possession.
22 "Constructive possession" occurs when the person with control does not
23 obtain physical possession.

24 (8) "Retrofit" means renovation or improvements associated with and
25 constructed adjacent to or near an existing site, subdivision, or
26 development in order to reduce or eliminate municipal storm water
27 runoff to receiving water bodies.

28 (9) "Storm water facilities" includes, but is not limited to,
29 ponds, biofiltration swales, storm water treatment tanks, detention
30 vaults, oil water separators, dry wells, catch basins, and filters.

31 (10) "Toxic storm water pollutant" means petroleum products,
32 pesticides, herbicides, and fertilizers. It also includes other
33 substances that are determined by rule by the department to be
34 significant contributors to the contamination of surface water runoff.

35 NEW SECTION. **Sec. 4.** (1) The storm water pollution account is
36 created in the state treasury. All receipts from the storm water
37 pollution fee must be deposited into the account. Moneys in the

1 account may be spent only after appropriation to the department for
2 activities or projects that mitigate or prevent contamination of storm
3 water by toxic storm water pollutants.

4 (2)(a) Of the moneys appropriated to the department in the omnibus
5 and capital appropriations acts for storm water grant programs the
6 department may spend no more than four percent for its administrative
7 costs. The department must distribute the remaining moneys annually as
8 provided in (b) of this subsection.

9 (b)(i) Seventy-five thousand dollars must be provided to each local
10 government that is subject to the national pollutant discharge
11 elimination system phase I or phase II municipal storm water
12 requirements for the purpose of addressing contamination of storm water
13 by toxic storm water pollutants.

14 (ii) Eleven million dollars must be provided to the Washington
15 state department of transportation and may be used only to fund
16 transportation infrastructure projects that address toxic storm water
17 pollution related to transportation infrastructure through the
18 implementation of the department of transportation's national pollutant
19 discharge elimination system programs permitted under the national
20 pollution discharge elimination system. These moneys may not be used
21 for construction of storm water facilities associated with new road
22 construction or new road alignment construction, but may be used for
23 construction that adds to or replaces an existing roadway.

24 (iii) Three million dollars must be provided as grants to a
25 nonprofit organization or organizations that develop storm water
26 prevention and treatment technologies, and assist businesses and
27 governmental entities in testing, monitoring, adopting, and
28 implementing new practices and technologies that will cost-effectively
29 reduce the impact of toxic storm water pollution.

30 (iv)(A) Forty-five percent of the moneys remaining after allocation
31 under (b)(i), (ii), and (iii) of this subsection (2) must be
32 distributed annually by the department through grants to local
33 governments covered by national pollutant discharge elimination system
34 municipal phase I or phase II permits. The grants must be used to fund
35 local government projects or activities that mitigate or prevent
36 contamination from toxic storm water pollutants or the recontamination
37 by toxic storm water pollutants of receiving waters previously

1 remediated under federal or state-approved activities. To be eligible,
2 local governments must provide fifty percent of project or activity
3 costs in matching funds from other nonstate fund sources.

4 (B) To qualify for funding under this subsection (2)(b)(iv), the
5 applicant must demonstrate:

6 (I) That the project or activity will address contamination of
7 surface waters by toxic storm water pollutants covered under this
8 chapter;

9 (II) The water quality outcomes planned for the project or
10 activity; and

11 (III) For capital improvement project proposals greater than one
12 million dollars, that at least fifteen percent of the labor hours will
13 be performed by apprentices.

14 (v)(A) Forty-five percent of the moneys remaining after allocation
15 under (b)(i), (ii), and (iii) of this subsection (2) must be allocated
16 annually by the department through grants to local governments for
17 retrofit projects that address contamination of storm water by toxic
18 storm water pollutants, or projects that directly reduce emissions that
19 result in air deposition of toxins from storm water pollutants. The
20 grants for retrofit projects must be prioritized for projects that
21 utilize low-impact development retrofit strategies; except that grants
22 may be awarded for other retrofit projects if the site does not lend
23 itself to low-impact development techniques or if other retrofit
24 techniques are shown to be more effective in terms of addressing water
25 quality problems associated with the site or the receiving water body.

26 (B) To qualify for funding, the applicant must demonstrate:

27 (I) That the project or activity will address contamination of
28 waterways by toxic storm water pollutants covered under this chapter;

29 (II) The water quality outcomes planned for the project or
30 activity; and

31 (III) For capital improvement project proposals greater than one
32 million dollars, that at least fifteen percent of the labor hours will
33 be performed by apprentices.

34 (vi) Ten percent of the moneys remaining after distributions have
35 been made under (b)(i), (ii), and (iii) of this subsection (2) must be
36 distributed to projects eligible under (b)(iv) or (v) of this
37 subsection (2). These moneys should be allocated to the highest
38 priority projects based upon ecological and water quality benefits as

1 determined by the department, and may be allocated to meet the matching
2 requirements under (b)(iv) of this subsection (2) to local governments
3 that demonstrate economic hardship in meeting the matching requirement.

4 (3) In consultation with stakeholders, the department must develop
5 criteria for administering the program and ranking projects for funding
6 based on water quality benefits. In developing criteria applicable to
7 projects in the Puget Sound basin, the department must consult with the
8 Puget Sound partnership to ensure the grants awarded will be consistent
9 with the prioritization of the 2020 action agenda. All activities or
10 projects approved for funding must demonstrate the potential to achieve
11 clear ecological or water quality benefits. The department must
12 endeavor to distribute the moneys within each geographic region of the
13 state in proportion to the severity of impacts to waterways from
14 contamination by toxic storm water pollutants.

15 NEW SECTION. **Sec. 5.** (1) Beginning July 1, 2011, a storm water
16 pollution fee is charged on the first possession of the following
17 substances: Petroleum products, pesticides, herbicides, and
18 fertilizers for the purpose of offsetting the burden of funding
19 projects and activities that redress state water pollution caused by
20 the presence of such substances in storm water runoff. The fee is
21 equal to one percent of the wholesale value of the toxic storm water
22 pollutant.

23 (2) The fee must be collected by the department. Fees must be
24 collected quarterly and must be deposited in the storm water pollution
25 account created in section 4 of this act.

26 (3) The department may adopt rules to identify additional toxic
27 storm water pollutants to be subject to the fee in subsection (1) of
28 this section that are determined to be significant contributors to the
29 contamination of storm water runoff in the state. The department may
30 amend the rules, as deemed necessary, to delete or add toxic storm
31 water pollutants, but may not add substances by a rule amendment more
32 than once in a twenty-four month period.

33 (4) The department may enter into agreements with other state
34 agencies to facilitate the most efficient collection of the fee.

35 NEW SECTION. **Sec. 6.** (1) The storm water pollution fee charged in
36 this chapter does not apply to the following:

1 (a) Any possession of fuel carried into this state in the fuel tank
2 for the motive power of any airplane, ship, truck, or other vehicle;

3 (b) Any successive possession of a toxic storm water pollutant for
4 which the fee was previously paid and which has not been remanufactured
5 or reprocessed in any matter, other than repackaging or recycling for
6 beneficial reuse, since the fee was paid; and

7 (c) Any possession of a toxic storm water pollutant by a person
8 under circumstances where the product is used, or is to be used, for a
9 personal or domestic purpose by that person or a relative of, or person
10 residing in the same dwelling as, that person. This exemption does not
11 apply to any possession by a person of a toxic storm water pollutant if
12 the product is used or is to be used for a business purpose.

13 (2) Any person claiming an exemption under subsection (1)(b) of
14 this section must maintain records to document that the storm water
15 pollution fee was paid.

16 NEW SECTION. **Sec. 7.** A credit against the storm water pollution
17 fee charged in this chapter is allowed for:

18 (1) Fees paid under this chapter on the possession of any toxic
19 storm water pollutant that is subsequently exported for sale outside
20 this state;

21 (2) Fees paid under this chapter on the possession of fuel carried
22 from this state in the fuel tank of any airplane, ship, truck, or other
23 vehicle.

24 NEW SECTION. **Sec. 8.** By December 1, 2013, and every two years
25 thereafter, the department and the Puget Sound partnership must report
26 to the governor and the appropriate committees of the legislature on
27 the progress of the program, the water quality and other environmental
28 quality outcomes of the storm water projects funded under this chapter,
29 and the suitability of the levels of allocations from the storm water
30 pollution account specified in section 4 of this act.

31 NEW SECTION. **Sec. 9.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** Sections 1 through 8 of this act constitute
2 a new chapter in Title 90 RCW.

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