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HOUSE BILL 2275

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State of Washington

66th Legislature

2020 Regular Session

By Representative Stokesbary

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1 AN ACT Relating to certain illegal discharges of sewage  
2 wastewater into Puget Sound; amending RCW 90.48.366, 90.48.367, and  
3 90.48.368; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Puget Sound is a unique resource of significant  
7 environmental, economic, recreational, aesthetic, and cultural value  
8 to Washington. Among many laws focused on protecting Puget Sound and  
9 its resources, the legislature has even created an entire state  
10 agency, the Puget Sound partnership, that is dedicated to maintaining  
11 and restoring Puget Sound.

12 (b) Unfortunately, among many threats to Puget Sound, the  
13 environmental impacts of wastewater discharges from municipal sewage  
14 systems have become especially problematic. In King county alone,  
15 there have been multiple large-scale spills in the past few years  
16 that together discharged hundreds of millions of gallons of sewage  
17 from improperly functioning treatment plants. In addition, hundreds  
18 of millions of gallons of combined sewage overflows are annually  
19 discharged in King county even when wastewater treatment plants  
20 function as expected; a fact that compounds the local environmental  
21 stress posed when wastewater treatment plants fail.

1 (c) Pollution is pollution, regardless of its source. When  
2 pollution enters Puget Sound and impacts sensitive ecosystems, harms  
3 economic activities and treaty-protected rights, such as shellfish  
4 fisheries, and limits recreational use of beaches and waters, this  
5 represents a natural resource damage affecting the people of  
6 Washington, regardless of whether that damage has arisen from a spill  
7 of oil or a spill of sewage. However, current law does not treat all  
8 threats to Puget Sound equally seriously.

9 (2) Therefore, it is the intent of the legislature to require  
10 compensation for natural resource damages to Puget Sound caused by  
11 certain illegal discharges of sewage-contaminated wastewater in a  
12 manner that is similar to the compensation required for natural  
13 resource damages caused by illegal discharges of oil. Furthermore,  
14 because of the difficulties and costs associated with precisely  
15 quantifying the natural resource damages caused by sewage spills, it  
16 is the intent of the legislature to direct the department of ecology  
17 to adopt a compensation schedule similar to that used to determine  
18 assessments for spills of oil that cause damages that are  
19 unquantifiable or not quantifiable at a reasonable cost.

20 **Sec. 2.** RCW 90.48.366 and 2011 c 122 s 9 are each amended to  
21 read as follows:

22 (1) (a) The department, in consultation with the departments of  
23 fish and wildlife and natural resources, and the parks and recreation  
24 commission, shall adopt rules establishing a compensation schedule  
25 for the discharge of oil in violation of this chapter and chapter  
26 90.56 RCW. The amount of compensation assessed under this schedule  
27 shall be:

28 ~~((a))~~ (i) For spills totaling one thousand gallons or more in  
29 any one event, no less than three dollars per gallon of oil spilled  
30 and no greater than three hundred dollars per gallon of oil spilled;  
31 and

32 ~~((b))~~ (ii) For spills totaling less than one thousand gallons  
33 in any one event, no less than one dollar per gallon of oil spilled  
34 and no greater than one hundred dollars per gallon of oil spilled.

35 ~~((2))~~ (b) Persistent oil recovered from the surface of the  
36 water within forty-eight hours of a discharge must be deducted from  
37 the total spill volume for purposes of determining the amount of  
38 compensation assessed under the compensation schedule.

1       (2) The department, in consultation with the departments of fish  
2 and wildlife and natural resources, and the parks and recreation  
3 commission, shall adopt rules establishing a compensation schedule  
4 for the illegal discharge of wastewater directly or indirectly into  
5 Puget Sound in violation of a permit required by RCW 90.48.162 and  
6 issued under this chapter. The amount of compensation assessed under  
7 the compensation schedule must be no less than one-tenth of one cent  
8 per gallon wastewater discharged in violation of a permit and no  
9 greater than thirteen cents per gallon of wastewater discharged in  
10 violation of a permit. By rule, the department may establish a  
11 minimum discharge volume or compensation amount, below which  
12 compensation is not assessed under this subsection. The illegal  
13 wastewater discharges subject to the provisions of this section  
14 include combined sewer overflows of sewage and stormwater.

15       (3) The compensation schedules adopted under this section shall  
16 reflect adequate compensation for unquantifiable damages or for  
17 damages not quantifiable at reasonable cost for any adverse  
18 environmental, recreational, aesthetic, or other effects caused by  
19 the spill and shall take into account:

20       (a) Characteristics of any ~~((oil))~~ substance spilled, such as  
21 toxicity, dispersibility, solubility, and persistence, that may  
22 affect the severity of the effects on the receiving environment,  
23 living organisms, and recreational and aesthetic resources;

24       (b) The sensitivity of the affected area as determined by such  
25 factors as:

26       (i) The location of the spill;

27       (ii) Habitat and living resource sensitivity;

28       (iii) Seasonal distribution or sensitivity of living resources;

29       (iv) Areas of recreational use or aesthetic importance;

30       (v) The proximity of the spill to important habitats for birds,  
31 aquatic mammals, fish, or to species listed as threatened or  
32 endangered under state or federal law;

33       (vi) Significant archaeological resources as determined by the  
34 department of archaeology and historic preservation; and

35       (vii) Other areas of special ecological or recreational  
36 importance, as determined by the department; and

37       (c) Actions taken by the party who spilled ~~((oil))~~ the substance  
38 or any party liable for the spill that:

39       (i) Demonstrate a recognition and affirmative acceptance of  
40 responsibility for the spill, such as the immediate removal of oil

1 and the amount of oil removed from the environment or other proactive  
2 measures designed to mitigate the severity of impacts of a nonoil  
3 spill; or

4 (ii) Enhance or impede the detection of the spill, the  
5 determination of the quantity of oil or other substances spilled, or  
6 the extent of damage, including the unauthorized removal of evidence  
7 such as injured fish or wildlife.

8 **Sec. 3.** RCW 90.48.367 and 1991 c 200 s 813 are each amended to  
9 read as follows:

10 (1) After a spill or other incident causing damages to the  
11 natural resources of the state, the department shall conduct a formal  
12 preassessment screening as provided in RCW 90.48.368.

13 (2) The department shall use the compensation schedule  
14 established under RCW 90.48.366 to determine the amount of damages  
15 for all illegal discharges of wastewater directly or indirectly into  
16 Puget Sound in violation of a permit required by RCW 90.48.162 or if  
17 the preassessment screening committee determines that: (a)  
18 Restoration or enhancement of the injured resources is not  
19 technically feasible; (b) damages are not quantifiable at a  
20 reasonable cost; and (c) the restoration and enhancement projects or  
21 studies proposed by the liable parties are insufficient to adequately  
22 compensate the people of the state for damages.

23 (3) If the preassessment screening committee determines that the  
24 compensation schedule should not be used, compensation shall be  
25 assessed for the amount of money necessary to restore any damaged  
26 resource to its condition before the injury, to the extent  
27 technically feasible, and compensate for the lost value incurred  
28 during the period between injury and restoration.

29 (4) Restoration shall include the cost to restock such waters,  
30 replenish or replace such resources, and otherwise restore the  
31 stream, lake, or other waters of the state, including any estuary,  
32 ocean area, submerged lands, shoreline, bank, or other lands  
33 adjoining such waters to its condition before the injury, as such  
34 condition is determined by the department. The lost value of a  
35 damaged resource shall be equal to the sum of consumptive,  
36 nonconsumptive, and indirect use values, as well as lost taxation,  
37 leasing, and licensing revenues. Indirect use values may include  
38 existence, bequest, option, and aesthetic values. Damages shall be

1 determined by generally accepted and cost-effective procedures,  
2 including, but not limited to, contingent valuation method studies.

3 (5) Compensation assessed under this section shall be recoverable  
4 in an action brought by the attorney general on behalf of the people  
5 of the state of Washington and affected counties and cities in the  
6 superior court of Thurston county or any county in which damages  
7 occurred. Moneys recovered by the attorney general under this section  
8 shall be deposited in the coastal protection fund established under  
9 RCW 90.48.390, and shall only be used for the purposes stated in RCW  
10 90.48.400.

11 (6) Compensation assessed under this section shall preclude  
12 claims under this chapter by local governments for compensation for  
13 damages to publicly owned resources resulting from the same incident.

14 **Sec. 4.** RCW 90.48.368 and 2007 c 347 s 2 are each amended to  
15 read as follows:

16 (1) The department shall adopt rules establishing a formal  
17 process for preassessment screening of damages resulting from spills  
18 to the waters of the state causing the death of, or injury to, fish,  
19 animals, vegetation, or other resources of the state. The rules shall  
20 specify the conditions under which the department shall convene a  
21 preassessment screening committee. The preassessment screening  
22 process shall occur concurrently with reconnaissance activities. The  
23 committee shall use information obtained from reconnaissance  
24 activities as well as any other relevant resource and resource use  
25 information. For each incident other than illegal discharges of  
26 wastewater directly or indirectly into Puget Sound in violation of a  
27 permit required by RCW 90.48.162, the committee shall determine  
28 whether a damage assessment investigation should be conducted, or,  
29 whether the compensation schedule authorized under RCW 90.48.366 and  
30 90.48.367 should be used to assess damages. For illegal discharges of  
31 wastewater directly or indirectly into Puget Sound in violation of a  
32 permit required by RCW 90.48.162, the compensation schedule provided  
33 in RCW 90.48.366(2) must be used. The committee may accept  
34 restoration or enhancement projects or studies proposed by the liable  
35 parties in lieu of some or all of: (a) The compensation schedule  
36 authorized under RCW 90.48.366(1) and 90.48.367; or (b) the claims  
37 from damage assessment studies authorized under RCW 90.48.142.

38 (2) A preassessment screening committee may consist of  
39 representatives of the departments of ecology, archaeology and

1 historic preservation, fish and wildlife, health, and natural  
2 resources, and the parks and recreation commission, as well as other  
3 federal, state, and local agencies, and tribal and local governments  
4 whose presence would enhance the reconnaissance or damage assessment  
5 aspects of spill response. The department shall chair the committee  
6 and determine which representatives will be needed on a spill-by-  
7 spill basis.

8 (3) The committee shall consider the following factors when  
9 determining whether a damage assessment study authorized under RCW  
10 90.48.367 should be conducted: (a) Whether evidence from  
11 reconnaissance investigations suggests that injury has occurred or is  
12 likely to occur to publicly owned resources; (b) the potential loss  
13 in services provided by resources injured or likely to be injured and  
14 the expected value of the potential loss; (c) whether a restoration  
15 project to return lost services is technically feasible; (d) the  
16 accuracy of damage quantification methods that could be used and the  
17 anticipated cost-effectiveness of applying each method; (e) the  
18 extent to which likely injury to resources can be verified with  
19 available quantification methods; and (f) whether the injury, once  
20 quantified, can be translated into monetary values with sufficient  
21 precision or accuracy.

22 (4) When a resource damage assessment is required for an oil  
23 spill in the waters of the state, as defined in RCW 90.56.010, the  
24 state trustee agency responsible for the resource and habitat damaged  
25 shall conduct the damage assessment and pursue all appropriate  
26 remedies with the responsible party.

27 (5) Oil spill damage assessment studies authorized under RCW  
28 90.48.367 may only be conducted if the committee, after considering  
29 the factors enumerated in subsection (3) of this section, determines  
30 that the damages to be investigated are quantifiable at a reasonable  
31 cost and that proposed assessment studies are clearly linked to  
32 quantification of the damages incurred.

33 (6) As new information becomes available, the committee may  
34 reevaluate the scope of damage assessment using the factors listed in  
35 subsection (3) of this section and may reduce or expand the scope of  
36 damage assessment as appropriate.

37 (7) The preassessment screening process shall provide for the  
38 ongoing involvement of persons who may be liable for damages  
39 resulting from an oil spill. The department may negotiate with a  
40 potentially liable party to perform restoration and enhancement

1 projects or studies which may substitute for all or part of the  
2 compensation authorized under RCW 90.48.366 and 90.48.367 or the  
3 damage assessment studies authorized under RCW 90.48.367.

4 (8) For the purposes of this section and RCW 90.48.367, the cost  
5 of a damage assessment shall be considered "reasonable" when the  
6 anticipated cost of the damage assessment is expected to be less than  
7 the anticipated damage that may have occurred or may occur.

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