

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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Legislation Title:

AN ORDINANCE relating to Seattle Public Utilities; approving changes to the Consent Decree previously authorized by Ordinance 123908 and authorizing the Director of Seattle Public Utilities to submit the amended Consent Decree to the U.S. District Court and to fulfill the obligations set forth therein; and ratifying and confirming certain prior acts.

Summary of the Legislation:

The proposed ordinance would slightly amend the Consent Decree which the Council previously authorized the director of Seattle Public Utilities to sign and implement. The Consent Decree is with the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) to reduce overflows from the City's 90 Combined Sewer Overflow (CSO) outfalls. After Council authorized the Consent Decree, EPA and Ecology negotiated a similar Consent Decree with King County. Some of the language in the King County Consent Decree differs from language in Seattle's and would be beneficial to the City. The proposed legislation authorizes SPU to submit to the Court an amended Consent Decree that is consistent with King County's consent decree.

Background:

The City of Seattle owns, maintains and operates a system of sanitary sewers and storm and surface water drainage as part of Seattle Public Utilities' drainage and wastewater system. The EPA determined sewage discharges from Seattle's combined sewers violate the federal Clean Water Act and the conditions and limitations of the National Pollutant Discharge Elimination System (NPDES) permit issued by Ecology. The EPA made Findings and Conclusions and issued a Consent Decree pursuant Section 402 of the Clean Water Act, 33 U.S.C. §1342(b).

The City last June approved Ordinance 123908 authorizing the Director of Seattle Public Utilities to enter into and fulfill the obligations of a Consent Decree addressing the City's Combined Sewer Overflows. Before finalizing the City's CSO Consent Decree, the federal government agreed to revise the Seattle's Consent Decree to give it the benefit of any favorable provisions included in King County's Consent Decree, which was completed in early November. Accordingly, SPU is seeking approval to change the Consent Decree approved pursuant to Ordinance 123908 with respect to the following:

- The City and County must submit an Integrated Plan for operating their sewer systems by March 1, 2016 and the EPA is allowed to resolve disputes over it.

- The City's Integrated Plan is no longer limited to stormwater control projects and may instead include any water quality improvement project (e.g. street sweeping) resulting in significant water quality benefits beyond those expected from CSO control measures alone. This change will allow the City to undertake a wider variety of projects to improve water quality.
- The revised Consent Decree expressly authorizes EPA and Ecology to reduce stipulated penalties for violating the Decree and recognizes either agency may opt not to demand stipulated penalties for a violation.
- The revised Consent Decree more clearly states the City may seek relief for failing to comply with the Decree if it experiences significant adverse changes to its financial circumstances. It also allows the City to seek changes to CSO controls or deadlines based on financial or budgetary problems.
- The parties may now agree to use a third-party mediator to resolve disputes arising from implementation of the Consent Decree.
- The courts would no longer be required to apply an "arbitrary and capricious" standard of review for any disputes referred to it for resolution. Under this standard of review, the court generally defers to the regulatory agency's position. This new language allows the City to argue the court should give more weight to the City's position in the dispute.

The new Consent Decree is in other respects essentially identical to the one approved earlier by Council. The City would still be required to develop and implement a CSO long-term control plan by 2025.

Please check one of the following:

☐ **This legislation does not have any financial implications.**

☒ **This legislation has financial implications.**

The financial implications of this legislation are the same as those associated with Ordinance 123908. No 2013 appropriation actions are required by this proposed Council Bill. There are, however, significant financial impacts that result from the regulatory requirements being placed on SPU by Ecology and the EPA, which are the subject of the Consent Decree.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Yes, the legislation has long-term financial implications. Those implications are described in Exhibit A.

b) What is the financial cost of not implementing the legislation?

The alternative to signing a Consent Decree is for EPA to sue the City. The resulting court order would likely impose much more stringent and costly requirements. The nature of these requirements is unpredictable and would make it difficult for the City to plan its projects. An order also would impose heavy penalties, which can be up to \$25,000 per day for each violation of the Clean Water Act. Criminal prosecution is possible against the City and against individuals. To prove a criminal case, the federal government only has to prove that the defendant was aware that pollutants were being discharged.

c) Does this legislation affect any departments besides the originating department?

This legislation primarily impacts SPU. However, the types of projects implemented to comply with the Consent Decree (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure, and underground storage structures) may have impacts on the Department of Planning and Development, the Department of Parks and Recreation, the Seattle Department of Transportation, and other City departments. Coordination with other City departments will be necessary to ensure successful implementation of the Consent Decree requirements. The Department of Parks and Recreation and the Seattle Center also are major drainage and wastewater ratepayers and, like all rate payers, will be impacted by the rate increases that are discussed in the attachment to the fiscal note.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

There are no alternatives to the legislation that could achieve the same or similar objectives.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

This legislation does not have an immediate impact on a particular piece of property. However, the types of projects that will be implemented to comply with the Consent Decree (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure (GSI), and underground storage structures) will have impacts on both private and public

property. These projects will be constructed in the public right-of-way, in City-owned lands, and/or on private property.

h) Other Issues:

None.

List attachments to the fiscal note below:

Exhibit A – Financial Impacts Summary (for reference – originally submitted to Council with CB 117408)

Exhibit A

City of Seattle Combined Sewer Overflow Reduction Program 2012 Environmental Protection Agency Consent Decree **Financial Impacts Summary**

4/24/2012

Background

The City of Seattle (City) owns, maintains and operates a system of sanitary sewerage and storm and surface water drainage as part of Seattle Public Utilities' Drainage and Wastewater System. The Environmental Protection Agency (EPA) has determined that the City has violated Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and the conditions and limitations of its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Washington Department of Ecology (Ecology). The EPA has made Findings and Conclusions and issued a Consent Decree pursuant Section 402 of the Clean Water Act, 33 U.S.C. §1342(b).

The City, EPA and Ecology have been negotiating the Consent Decree since 2011. The Consent Decree requires the City to pay a civil penalty of \$350,000 for violations of the Clean Water Act. The Consent Decree also requires the City to implement its combined sewer overflow (CSO) reduction program by 2025, but includes provisions which allow the City to defer CSO investments if alternative projects which yield greater benefit to the receiving waters can be identified by 2018. The Consent Decree allows the City to use a significantly more cost effective asset management approach to performing operations and maintenance of sewerage infrastructure. The Consent Decree calls for coordination and optimization between the City and King County on their current and future wastewater system operation. Lastly, the Consent Decree provides protection for the City from certain 3rd party lawsuits.

Financial Impact of Implementing the Consent Decree Requirements

The budget estimate for completing SPU's CSO Reduction Program by 2025 ranges from \$182 million to \$627 million (*2010 CSO Reduction Plan Amendment, p. 5-18*). For purposes of estimating the financial impact of the Consent Decree, SPU has conservatively assumed remaining program expenditures will be approximately \$500 million.

The current projected spending path from 2012-2025 is shown in Figure 1 (page 2) and Table 1 (page 3).

Exhibit A

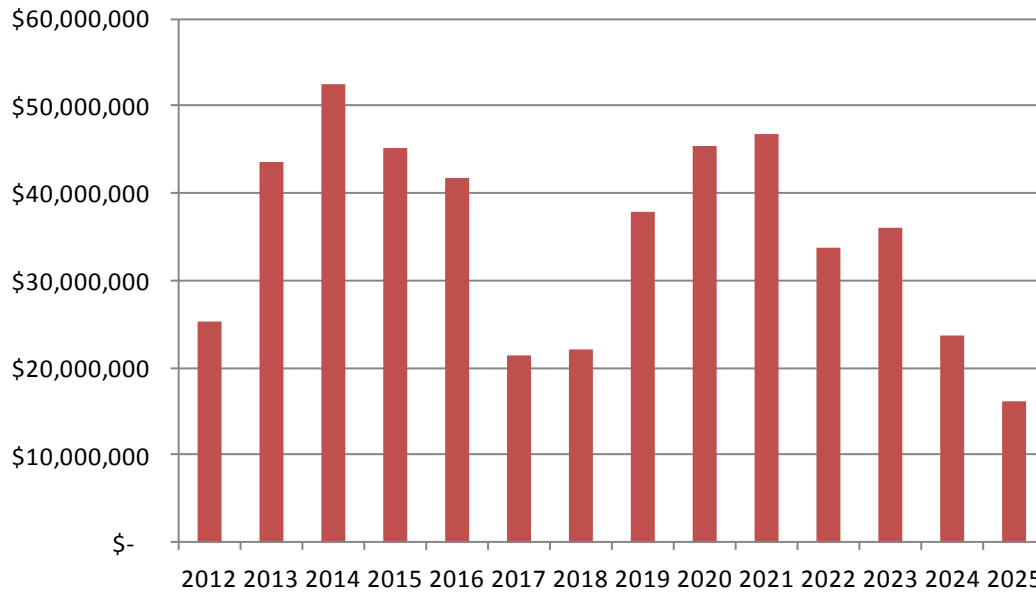


Figure 1. Annual CIP Expenditures for Implementing Consent Decree Requirements

In October 2010, SPU submitted a long-range spending projection (2011-2025) in a memorandum to the City Council that accompanied an ordinance to approve a State of Washington Department of Ecology Administrative Order. The spending path shown in Figure 1 is similar to the 2010 projection in that the total program expenditures are still estimated to be approximately \$500 million. However, the current spending path differs from the projection in 2010 in several ways:

- Expedited Schedules for Genesee & Henderson Projects: In 2010, SPU's timelines for implementing projects had project durations that were longer than are necessary. SPU has identified that it can shorten the duration of its projects by 1-3 years. As a result, the Genesee and Henderson projects are being implemented on a faster schedule. The expediting of schedules has led to projected spending in 2013-2016 that is higher than what was anticipated in 2010. However, the overall program costs have not increased as a result in the schedule acceleration. (CIP expenditures are lower than originally projected from 2017-2019.)
- Added Emphasis on Green Stormwater Infrastructure (GSI) Projects: In 2011, through its Long-Term Control Plan (LTCP) project, SPU identified additional opportunities to construct green stormwater infrastructure (GSI) in CSO basins early on to reduce the size of underground storage projects, which would be constructed from 2017-2025. This correlates to a \$12 million increase in green stormwater infrastructure (GSI) spending from 2011-2016 above the 2010 projection. The size of the GSI investments from 2012-2016 is still being analyzed and will depend on a number of factors including public involvement and rates.

Exhibit A

- Outfall Rehabilitation Program: In the late Fall of 2010, SPU received a new requirement in its NPDES permit to rehabilitate deteriorated outfalls. Two of those outfalls are located in the Henderson CSO Basin (Outfall #45 and Outfall #44). SPU is planning on replacing those two outfalls as part of the S Henderson project, which is leading to an increase in that project's budget.

Rate Impact of Implementing the Consent Decree Requirements

Regardless of the program completion date, rate increases will be necessary to fund the CSO capital program. Executing the requirements of the Consent Decree will require a cumulative maximum rate increase of approximately \$8 per month for a typical drainage and wastewater customer by the year 2025. This is consistent with the long-range rate projection that was presented to the City Council in 2010.

Exhibit A

Table 1. Annual CIP Expenditures for 2012-2025 for Implementing Consent Decree Requirements

(in year of expenditure, or ‘nominal’, dollars)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
CSO Reduction Capital Program	\$25,352,065	\$43,576,950	\$52,589,392	\$45,113,282	\$41,751,299	\$21,330,151	\$22,024,175	\$37,916,263	\$45,317,925	\$46,744,875	\$33,695,263	\$35,976,896	\$23,595,347	\$16,126,629