

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Seattle Public Utilities	Melissa Ivancevich	Akshay Iyengar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities to submit for approval to the U.S. District Court for the Western District of Washington a First Material Modification to the 2013 Consent Decree entered into by the United States Environmental Protection Agency, the State of Washington Department of Ecology, and The City of Seattle in Civil Action No. 2:13-cv-00678, and to fulfill the obligations set forth therein.

Summary and Background of the Legislation:

The City 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 to the City by Ecology in 2010. To resolve the matter, the City, EPA, and Ecology entered into a CSO Consent Decree approved by the court on July 3, 2013.

As part of its CSO Consent Decree commitments, the City agreed to reduce sanitary sewer overflows (SSOs) by implementing an adaptive performance-based Capacity, Management, Operations, and Maintenance (CMOM) program, and to control CSOs to the state standard of one overflow per year per outfall by implementing large capital projects and other CSO control projects.

This proposed ordinance would authorize the General Manager and Chief Executive Officer of Seattle Public Utilities (SPU) to sign and implement the First Material Modification to Consent Decree (First Material Modification) for the 2013 CSO Consent Decree entered into between the United States Environmental Protection Agency (EPA), the Washington Department of Ecology (Ecology), and the City of Seattle (City) to reduce overflows from the City's 82 Combined Sewer Overflow (CSO) outfalls.

The City has made significant progress since entering the CSO Consent Decree in 2013. The City's adaptive, performance-based CMOM program has reduced SSOs. Through implementation of more than 50 CSO capital projects and programs, CSOs will be significantly reduced by 2027 when the largest capital project, the Ship Canal Water Quality Project, is completed.

However, when implementing the CMOM program and CSO control projects, SPU learned that conditions have changed. Updated planning and an extension of the overall deadline are needed to account for changing rainfall patterns and sea level rise, increasing costs and rate affordability

challenges, and opportunities to partner with King County on additional projects. The City, therefore, requested on August 6, 2019, to begin conversations with EPA and Ecology, describing its interests in modifying the CSO Consent Decree. As requested by EPA and Ecology, the City submitted its specific modification requests and supporting documentation on December 7, 2022.

The City, EPA, and Ecology subsequently negotiated the First Material Modification, which requires the City to complete key milestones for its CSO reduction projects by December 31, 2037. The First Material Modification also calls for continued and additional coordination and optimization between the City and King County on their current and future wastewater system operations. Finally, the First Material Modification allows for additional planning and ongoing adaptive management to account for changing rainfall patterns and sea level rise that can affect CSO control projects.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ☐ Yes ☒ No

Projects will be included in proposed budgets through 2027, the expected completion date.

Projects occurring in 2024 and 2025 are included in the adopted and proposed budget. Total anticipated project costs through 2027 are \$74M.

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? ☐ Yes ☒ No

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

NA

Please describe any financial costs or other impacts of *not* implementing the legislation.

The alternative to signing the First Material Modification is judicial enforcement action initiated by EPA or Ecology. A resulting court order, or revised court order, could impose more significant and costly requirements. The nature of such requirements is unpredictable and could make it difficult for the City to plan and implement its projects. Clean Water Act enforcement can carry heavy penalties, including Criminal prosecution.

4. OTHER IMPLICATIONS

- a. **Please describe how this legislation may affect any departments besides the originating department.**

This legislation primarily impacts SPU. However, the types of projects implemented to comply with the First Material Modification (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure, and underground storage structures) may have impacts on the Office of Planning and Community 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 implement the First Material Modification requirements.

- b. **Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this 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 First Material Modification (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure, and underground storage structures) will have impacts on both private and public property. These projects will be constructed in the public right-of-way, on City-owned lands, and/or on private property.

- c. **Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**

- i. **How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**

This legislation allows the City to align or partner with King County CSO control projects, which prioritize the Duwamish area. The First Material Modification delays the timeline for SPU's South Park Water Quality Facility, thereby giving the City more time to partner and leverage investments to support South Park community goals.

- ii. **Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**

A Racial Equity Toolkit or other racial equity analyses was not utilized in the development of this legislation.

- iii. **What is the Language Access Plan for any communications to the public?**

SPU has a language access plan that outlines expectations for each CSO consent decree program to develop language access strategies as part of their outreach, engagement, and communications efforts.

d. Climate Change Implications

- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**

This legislation would not increase or decrease carbon emissions.

- ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

Climate change and climate variability have a significant impact on the sizing of CSO control measures, which is highlighted by the fact that multiple projects that have been completed now require modifications, even though climate change was considered in their sizing. Precipitation conditions (intensity and magnitude) over the last decade are not as anticipated in earlier planning efforts. Future projects need to be re-evaluated based on a climate framework adjusted for updated information and enhances compliance. Future projects will need to account for greater variability and magnitude of wet weather events. This may result in changes in the type of project required.

- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**

The overall goal of the CSO program remains the same as when SPU entered its existing CSO Consent Decree in 2013, to control all permitted CSO outfalls and sanitary sewer overflows to the state standard and per state and federal law.

5. CHECKLIST

- ☐ Is a public hearing required?
- ☐ Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?
- ☐ If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?
- ☐ Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?

6. ATTACHMENTS

Summary Attachments: