

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Seattle Public Utilities	David Schuchardt	Akshay Iyengar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the Lower Duwamish Waterway; authorizing Seattle City Light and Seattle Public Utilities to: continue expending funds to participate in environmental investigation and remediation of the Lower Duwamish Waterway Superfund Site, according to the terms of a Consent Decree with the United States and the State of Washington and according to the terms of settlements with multiple other parties; accept funds from other parties and indemnify them according to settlement agreements with those parties; continue seeking and accepting state Remedial Action Grants for work related to the Superfund Site; commit to spend funds pursuant to the terms of additional orders from the federal and state regulatory agencies for remedial work at sites related to the Lower Duwamish, including T-108, South Park Marina, and North Boeing Field/Georgetown Steam Plant; and commit to sharing costs with other parties regarding those Related Sites; and ratifying and confirming certain prior acts.

Summary and Background of the Legislation: The U.S. Environmental Protection Agency in 2000 listed the Lower Duwamish Waterway (LDW) as a Federal Superfund Site. Since that time, the City of Seattle has partnered with King County, the Port of Seattle, and the Boeing Company under the auspices of the Lower Duwamish Waterway Group (LDWG). The LDWG members worked voluntarily under an EPA Administrative Order on Consent (AOC) to conduct the cleanup studies that support EPA’s 2014 final cleanup Record of Decision and to prepare for remedial action in the waterway. The LDWG members and EPA have amended the AOC five times since 2014 to continue investigation and design work to prepare for the cleanup. The City is also involved in cleaning up several upland sites related to the LDW, under separate EPA or Ecology cleanup orders (“Related Sites”).

Since 2000, LDWG members shared costs equally under an interim cost sharing Memorandum of Agreement. A confidential mediation process was conducted to allocate equitable shares of past and future costs among 40-plus potentially responsible parties who contributed to the waterway’s contamination. That 8-year process provided a basis for negotiating settlements among the parties. After two years of negotiations, the parties agreed to settlements that result in most of the parties paying the LDWG members a lump sum for their equitable shares of past and future costs of the remedial work. The payments will go into a trust set up by LDWG to partially fund the remedial work. The balance of the needed funds will be provided by the City, King County and Boeing, plus any funds they succeed in obtaining from additional parties. The City also is eligible for State Remedial Action Grant funding, which reimburses up to 50% of City cleanup costs.

This legislation would authorize the City to commit to actions that will entail the expenditure of funds beyond the current budget cycle, pursuant to the terms of the Consent Decree and settlement agreements with other parties and further orders from federal and state regulatory agencies. It would also authorize SPU and Seattle City Light to accept funds from other parties for the past and future costs of implementing the AOC and the Consent Decree, pursuant to the terms of negotiated settlements with those parties.

The total cost of the LDW cleanup, including design, construction, long-term monitoring and maintenance, and institutional controls, was estimated by EPA as at least \$667,842,290. The City will receive about \$83,034,408 of the funds paid by other parties for future costs according to the settlement agreements. Those funds may only be used to implement the Consent Decree. The City also will pay about \$127,089,399 of the future costs estimated by EPA. The City is eligible for State Remedial Action Grant funding, which reimburses up to 50% of City cleanup costs.

2. CAPITAL IMPROVEMENT PROGRAM

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

3. SUMMARY OF FINANCIAL IMPLICATIONS

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

The cleanup work is currently underway and required under the Federal Unilateral Administrative Order signed by the City. The Consent Decree requires the same work, with the benefits of facilitating settlements and protections against lawsuits. SCL and SPU have each budgeted for these projects assuming signature of the Consent Decree and pursuit of the associated cost settlements.

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.

N/A

Please describe any financial costs or other impacts of *not* implementing the legislation.
If the City does not sign the Consent Decree, EPA would likely issue a Unilateral Order requiring the City to implement the same work. That would likely cause the other parties to abandon their settlements because they would not be protected from future lawsuits. The City

would therefore not receive funds from them without litigation, which is costly and has uncertain outcomes.

4. OTHER IMPLICATIONS

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

Seattle City Light (SCL) is also named in the Consent Decree. SPU and SCL share costs at 85% /15% respectively.

b. Does this legislation affect a piece of property?

No.

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.

Communities in the Duwamish Valley are both vulnerable and historically disadvantaged. Signing the Consent Decree would affirm Seattle's 20+ year commitment to correct the historic contamination and associated health risks. Seattle works with its project partners and EPA to implement meaningful public participation in the cleanup including multi-lingual meetings and written materials.

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

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

EPA leads public outreach and multilingual communications, including specific communications plans developed for the project.

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.

The cleanup is required by EPA and will proceed regardless of this legislation. The cleanup is a construction project with its own associated short-term construction emissions. The engineering design seeks to minimize these emissions using green remediation best practices.

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.

No effects on resiliency are expected.

- 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?**

This legislation allows the City to move forward with the planned cleanup under the authority of a Consent Decree. The cleanup goals are identified in EPA’s Record of Decision for the cleanup project.

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:

Summary Exhibit A – Consent Decree

Summary Exhibit B – Response Cost Settlement and Implementation Agreement for Lower Duwamish Waterway Superfund Site

Summary Exhibit C – Settlement Agreement and Mutual Release Between Settling Cash-Out Parties, The Boeing Company, The City of Seattle, and King County

Summary Exhibit D – Settlement Agreement and Mutual Release Between Continental Holdings, Inc., The Boeing Company, The City of Seattle, and King County

Summary Exhibit E – Settlement Agreement Regarding Shared Allocation and Database Costs