

HOUSE BILL REPORT

2E2SSB 5296

As Passed House:
June 13, 2013

Title: An act relating to the model toxics control act.

Brief Description: Concerning the model toxics control act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford).

Brief History:

Committee Activity:

None.

Second Special Session

Floor Activity:

Passed House: 6/13/13, 67-18.

Brief Summary of Second Engrossed Second Substitute Bill

- Amends the Model Toxics Control Act's authorized uses of funds in the State Toxics Control Account and the Local Toxics Control Account, effective July 1, 2013.
- Creates the Environmental Legacy Stewardship Account to fund certain authorized pollution prevention and contamination cleanup activities at a quicker-than-average schedule, and creates the Radioactive Mixed Waste Account, funded by receipts received from facilities assessed serviced charges, for expenditures on the regulation of current or decommissioning facilities that treat, store, or dispose of mixed waste.
- Directs the Department of Ecology (DOE) to establish model remedies for the cleanup of contamination from common categories of facilities, types of remedies, and geographic areas.
- Authorizes the DOE to enter into extended grant agreements with local governments to fund cleanup projects whose activities span multiple fiscal biennia.
- Authorizes the creation of redevelopment opportunity zones and brownfield redevelopment authorities by cities and counties to facilitate the cleanup of contaminated properties in geographic areas meeting certain conditions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jacob Lipson (786-7196).

Background:

The Model Toxics Control Act (MTCA), which is administered and enforced by the Department of Ecology (DOE), requires liable parties to clean up sites contaminated with hazardous substances, and authorizes the DOE to conduct certain pollution prevention activities. Under the MTCA, the State and Local Toxics Control Accounts (STCA and LTCA) were established to provide for activities including hazardous and solid waste planning, contaminated site cleanup grants to local governments, and other activities related to hazardous waste prevention, management, and remediation.

The primary source of revenue used to fund the activities authorized under the STCA and the LTCA is a tax of 0.7 percent on the value of hazardous substances, but additional revenue originates from remedial action cost recovery from potentially liable persons, mixed waste fees, and fines and penalties. Of the hazardous substance tax revenue, the STCA receives 47 percent of the revenue obtained from the hazardous substance tax, while the LTCA receives 53 percent.

State Toxics Control Act.

The STCA funds are statutorily authorized, without prioritization, for expenditure on state programs the following state programs:

- hazardous waste planning;
- solid waste planning;
- hazardous waste cleanup;
- matching funds to meet federal cleanup law requirements;
- financial assistance for local programs in solid waste, hazardous waste, used oil recycling, and waste reduction, hazardous waste reduction and recycling efforts;
- hazardous materials response training;
- water and environmental health protection and monitoring;
- the Centennial Clean Water Fund;
- public participation activities;
- funding for remedial actions by potentially liable parties under certain settlement agreement conditions and findings made by the DOE;
- alternative hazardous waste management priorities; and
- various activities temporarily authorized to receive the MTCA funds through the 2013 fiscal biennium, including the program activities of several DOE administrative divisions.

Local Toxics Control Act.

The LTCA funds are spent on grants and loans to local governments to conduct the following activities in descending order of priority:

- remedial actions;
- hazardous waste plans and programs;
- solid waste plans and programs;
- methamphetamine production site cleanup; and

- derelict vessel cleanup.

Contaminated Site Cleanup.

Under the MTCA, potentially liable parties must clean up sites contaminated with hazardous materials. Potentially liable parties may include current or past facility owners and operators and parties that transported or arranged for the disposal or treatment of hazardous substances at a site. Where there are more than one potentially liable party, each party is jointly and severally liable for cleanup. The DOE uses several methods to assist potentially liable persons to clean up hazardous waste sites, including a voluntary clean-up program, entering into settlement agreements or consent decrees, and agreed orders. The chronology of the site cleanup process usually involves an initial investigation, an assessment of the site's hazardousness and a ranking relative to the hazardousness of other contaminated sites, an investigation of the extent and magnitude of site contamination and potential human health and environmental impacts, the selection of a cleanup action, and, ultimately, the performance of the selected cleanup activity.

Summary of Bill:

Hazardous Substance Tax Revenue Allocation.

The Environmental Legacy Stewardship Account (ELSA) is created, and Hazardous Substance Tax (HST) revenue is to be allocated among the ELSA, the Local Toxics Control Account (LTCA), and the State Toxics Control Account (STCA) as follows:

State Toxics Control Account and Local Toxics Control Account.

The STCA and the LTCA receive the first \$140 million of the annual HST revenue:

- the STCA receives 56 percent; and
- the LTCA receives 44 percent.

Environmental Legacy Stewardship Account.

Initially funded by a \$45 million transfer from the LTCA and a \$45 million transfer from the STCA, the ELSA receives all of the HST revenues above the \$140 million threshold at which the HST revenues shift from the STCA and the LTCA to the ELSA.

The Legislature may transfer funds between the three accounts if it determines that priorities for spending exceed available funds in any particular account.

Program Activities Funded by the Model Toxics Control Act Accounts.

Certain authorized uses for the STCA and the LTCA are added, eliminated, and transferred between accounts. The ELSA is created under the Model Toxics Control Act (MTCA), and contains funds authorized for expenditure on certain new program activities and priorities, as well as on certain program activities that had been previously funded under the STCA or the LTCA. The STCA and the LTCA funds are explicitly restricted from being used on high performance buildings and activities related to natural disasters where there is not hazardous material contamination. In addition, the following specific changes are made to program activities authorized and prioritized under the STCA, the LTCA, and the ELSA.

State Toxics Control Act.

Certain STCA authorized uses are eliminated:

- hazardous material response training; and
- several activities temporarily funded via the STCA through 2013. These removed activities include shoreline update grants and programs on family forest fish passage, water quality, shorelands management, waste reduction, and hazardous and nuclear waste.

The following new uses of the STCA funds are added:

- oil and hazardous material spill prevention;
- paint and hazardous waste disposal programs from households, small business, and agriculture;
- agriculture and health programs for pesticide reduction and disposal;
- funding requirements for federal fund receipt under the Solid Waste Disposal Act;
- toxic air pollution and air quality programs (previously *temporarily* funded through the STCA)
- storm water pollution control projects with a nexus to hazardous clean-up sites or existing remedial actions;
- public funding to assist potentially liable persons to pay for remedial actions under settlement agreements, if the project is located within a redevelopment opportunity zone and meets certain other criteria; and
- cleanup of petroleum based plastic or polystyrene foam debris in fresh or marine waters;

Local Toxics Control Act.

The following new uses of the LTCA funds are added:

- extended grant agreements with local governments, where costs will exceed \$20 million and cleanup activities will extend over multiple biennia;
- storm water pollution control projects; and
- cleanup of petroleum based plastic or polystyrene foam debris in fresh or marine waters;

Extended grant agreements are established as the top priority for expenditures of the LTCA funds, followed in descending order of priority by remedial actions, storm water pollution, hazardous waste plans and programs, solid waste plans and programs, and plastic and foam debris cleanup. Among remedial action grants specifically, priority is to be given to facilities on the state's hazardous sites list with a high hazard ranking and approved work plan, and to brownfield sites within designated redevelopment opportunity zones. Methamphetamine sites and derelict vessel cleanup are removed as approved LTCA fund uses; derelict vessel cleanup is now to be funded under the new ELSA.

Environmental Legacy Stewardship Account.

The ELSA funds may be spent on measures including performance and outcome-based projects, model remedies, technologies, procedures, contracts, and project management that result in significant reductions in the average time spent to complete:

- activities authorized under the STCA and the LTCA;
- storm water low-impact development retrofits and other significantly environmentally beneficial projects which reduce storm water pollution from existing infrastructure and development; and
- abandoned and derelict vessel cleanup.

Mixed Waste Account.

A new radioactive mixed waste account is created under the hazardous waste management statute. The account is initially funded via a transfer of the mixed waste fee fund balance of the STCA, while future account revenues will be generated via the existing services charges on mixed waste facilities that treat, store, or dispose of mixed waste. Funds in the account may only be spent after appropriation, and only on the regulation of current or decommissioning mixed waste facilities.

Model Remedial Actions.

The Department of Ecology (DOE) is authorized to create model remedial actions for common types of facilities, hazardous substances, media, and geographic areas. In developing model remedies, the DOE must solicit proposals from qualified persons, and provide opportunity for public comment. Model remedies must:

- identify the requirements which qualify a contaminated facility to use the model remedy;
- identify the monitoring requirements associated with the remedy;
- describe how the model remedy meets clean-up standards; and
- describe the requirements for the selecting a DOE-established model remedy.

Potentially liable persons who submit model remedy proposals to the DOE are exempt from the usual requirement that the party proposing the cleanup analyze alternative cleanup remedies. The DOE must accept public comments on the model remedy's use at the site, and may waive the cost of reviewing and providing a written opinion the potentially liable party's proposal to use a model remedy.

Brownfield Redevelopment.

Brownfield renewal authorities (BRAs) and redevelopment opportunity zones may be designated and established by cities, counties, and port districts.

- Redevelopment opportunity zones are geographic areas meeting certain criteria.
- The BRAs are municipal corporations (with bonding authority) charged with managing the cleanup and reuse of a designated redevelopment opportunity zone.

The Attorney General may enter into a settlement with a prospective purchaser of brownfield properties, provided that the settlement will yield substantial new resources to facilitate cleanup, will expedite remedial action, and the DOE determines that redevelopment is unlikely to contribute to hazardous material releases or to increase public health risks. Alternatively, the DOE may also enter into an agreed order with the prospective purchaser of a property in a designated redevelopment zone, with the DOE's enforcement action paused so long as the purchaser meets requirements laid out in the agreed order.

The Brownfield Redevelopment Trust Fund Account (BRTFA) is created, and is funded by appropriations, voluntary donations, and settlements or court orders that explicitly direct money to the account. Funds may be spent on remediation and cleanup at specific redevelopment opportunity zones or by the BRAs that the funds in the account were deposited for. Funds must be spent on remediation and cleanup consistent with a clean-up plan approved by the DOE. If sufficient progress on plan cleanup is not made by a BRA, the DOE may require the BRA's dissolution. Any funds remaining after the completion of

cleanup of all properties within the redevelopment opportunity zone or BRA revert to the STCA.

Planning and Reporting Requirements.

Several new administrative reporting requirements associated with the DOE's MTCA pollution prevention and cleanup activities are created:

- the DOE is directed to plan hazardous waste cleanup and prevention spending at a pace to match the cash resources in the LTCA, the MTCA, and the ELSA;
- the DOE must include budget estimates for multi-biennia cleanup projects costing more than \$10 million in its ten-year financing plan reports for the LTCA, the MTCA, and the ELSA;
- the DOE's reports on the STCA, the LTCA, and the ELSA hazardous waste site rankings and actions are reduced in frequency from annual to biennial, and must include certain specified information regarding the progress of cleanup of individual hazardous waste sites;
- by November 1, 2016, the DOE must report on the development and use of model remedies; and
- the DOE must track requests for independent remedial actions, and submit a report by 2015 assessing its achievements towards performance goals it is directed to establish.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2013.