

# SENATE BILL REPORT

## E2SSB 5296

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As Passed Senate, April 22, 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:** Energy, Environment & Telecommunications: 1/23/13, 2/13/13 [DPS-WM, DNP].

Ways & Means: 2/20/13, 4/11/13 [DP2S, DNP].

Passed Senate: 4/22/13, 25-23.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5296 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Brown, Chase and Honeyford.

**Minority Report:** Do not pass.

Signed by Senators Ranker, Ranking Member; Billig.

**Staff:** Jan Odano (786-7486)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5296 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Bailey, Becker, Braun, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

**Minority Report:** Do not pass.

Signed by Senators Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Conway, Fraser, Hasegawa, Keiser, Kohl-Welles and Ranker.

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*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:** Sherry McNamara (786-7402)

**Background:** The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances were released are cleaned up. MTCA is funded by a 0.7 percent tax on the wholesale value of hazardous substances, cost recovery from remedial actions, mixed waste fees, and to a lesser extent fines, penalties, and other charges. The State Toxic Control Account (SCTA) receives 47 percent of the revenue obtained from the hazardous substance tax (HST), while the Local Toxic Control Account (LTCA) receives 53 percent.

DOE is responsible to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. DOE must prioritize funding to clean up hazardous waste sites and prevent future hazardous waste sites. Hazardous waste sites are ranked by considering the amount and type of contamination, the risk that contamination will spread, and routes of exposure. Sites are considered a higher priority when the contamination threatens drinking water supplies, exists in high quantity or over a large area, is toxic to animals or fish, may affect a body of water, or affects public health.

SCTA and LTCA provide funding for activities such as state programs for hazardous and solid waste planning, management, and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. DOE must use LTCA funds for grants and loans to local governments with a prioritized order beginning with remedial actions, hazardous waste plans and programs, solid waste plans and programs, cleanup of methamphetamine production sites, and cleanup and disposal of hazardous substances from abandoned or derelict vessels.

When partnering with local communities and liable parties for cleanup, DOE may alter grant-matching requirements to incentivize local governments to expedite cleanups when funding would mitigate unfair economic hardship imposed by the cleanup liability; create new substantial economic development, public recreational, or habitat restoration opportunities; or create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property that would not otherwise occur.

Liable parties must clean up sites contaminated with hazardous materials. DOE uses several methods to assist potentially liable persons to clean up hazardous waste sites such as the voluntary clean-up program, consent decrees, and agreed orders.

The Attorney General may agree to a settlement with a potentially liable person when a proposed settlement would lead to a more expeditious cleanup. In addition, to promote cleanup or site reuse, the Attorney General may agree to a settlement with a person who is not liable for cleanup but proposes to clean up, redevelop, or reuse the site when the settlement will bring new resources to facilitate the cleanup. Priority must be given to settlements that will provide a substantial public benefit which include vacant or abandoned manufacturing or industrial facilities.

DOE must prepare a ten-year financing report every two years. The report must identify long-term remedial action project costs, track expenses, and project future needs.

Additionally, DOE must project the remedial action need, cost, revenue, and recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both SCTA and LTCA.

**Summary of Engrossed Second Substitute Bill: State and Local Toxics Control Accounts.**

The percentage of HST revenues to be deposited into STCA and LTCA is revised. The percentage to STCA is changed from 47 percent to 56 percent, and to LTCA from 53 percent to 44 percent.

The uses of state and local toxic control account funds are prioritized to:

- sites that are prepared to begin clean-up action;
- brownfield properties; and
- public funding to assist potentially liable persons who entered into a settlement agreement with the state and are prepared to begin clean-up action.

New uses of the funds are added, including the following:

- state agriculture and health programs for pesticide disposal, recycling, and reduction;
- stormwater pollution control projects and activities; and
- air quality programs.

Creates the Environmental Legacy Stewardship Account (ELSA). Once \$115 million of the HST is distributed to STCA and LTCA, the remainder collected must be deposited into ELSA. A one-time transfer of \$45 million is made from each the STCA and LTCA to ELSA. ELSA funds may be used for:

- performance and outcome-based projects that support cleanup, monitoring, and prevention of releases of hazardous substances; water protection and monitoring; and water pollution prevention and monitoring;
- clean-up projects using model remedies;
- stormwater projects;
- cleanup of derelict vessels; and
- remedial action grants.

Model Remedies. DOE must:

- establish model remedies for common categories of facilities, hazardous substances, media, or geographic regions to streamline and accelerate the clean-up process;
- accept the use of a model remedy at facilities meeting the requirements for such cleanup – neither an analysis of alternatives nor a feasibility study are required; and
- submit a report on the status and use of model remedies, including the number and types of model remedy proposals submitted by qualified, private-sector engineers, contractors, or consultants.

Brownfield Redevelopment Trust Fund (Trust Fund). The trust fund is created only for remediation and clean-up activities within a designated redevelopment opportunity zone. The trust fund may receive legislative appropriations, voluntary contributions made to specific zones or brownfield redevelopment authorities, and receipts from settlements or court orders that direct payment to the trust fund for specific zones. The trust fund must be credited with all investment income earned by the trust fund. The local government establishing the redevelopment opportunity zone must be the beneficiary of the subaccount.

All expenditures from the trust must be used for remediation and cleanup of properties and facilities consistent with a plan approved by DOE. The expenditures must meet eligibility requirements for remedial action grants. DOE must provide a biennial report on each subaccount activity.

When DOE determines that all remedial actions are complete and payments are made from the trust fund, any remaining monies must be transferred to STCA. If DOE determines that substantial progress has not been made within six years wherein deposits were made into the trust fund account, or the brownfield renewal authority is not a viable entity, then all remaining funds must be transferred to STCA.

Redevelopment Opportunity Zone. A city, county, or port district may designate a redevelopment opportunity zone when it adopts a resolution determining the following:

- at least 50 percent of the upland properties in the area are brownfields, and the brownfield properties do not need to be contiguous;
- the upland areas are completely owned by the city or county and the property owners gave consent to be included in the zone;
- cleanup will be integrated and consistent with comprehensive land use plans for future uses; and
- the proposed property is within an urban growth area.

Port districts must additionally own at least 50 percent of the upland property, or have property owners consent to be included in the zone. The city or county must approve the redevelopment opportunity zone designation. Designated redevelopment opportunity zones have priority for available grant funds when the demand exceeds the amount of available funding.

Brownfield Renewal Authority (Authority). A city, county, or port district may establish an authority for implementing cleanup and reuse of properties within a redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish an authority through an interlocal agreement. The authority must be governed by a board of directors who are determined by resolution or interlocal agreement. The authority must be a municipal corporation. DOE may require an authority to dissolve, if it determines that substantial progress for remedial actions was not made within six years of establishment of the authority. All assets, except remaining funds from the trust account transfer to STCA, and liabilities transfer to the city, town, or port district establishing the authority.

Settlement Agreements. The primary purpose of a settlement agreement is to promote the cleanup and reuse of brownfield property. The Attorney General and DOE may give priority to settlements that provide a substantial public benefit to the reuse of brownfield properties including cleanup and reuse of property that provides access to the public, new or improved public recreational opportunities, and preservation of historic properties. Alternatively, DOE may issue an agreed order to a prospective purchaser of a property within a redevelopment opportunity zone that stays enforcement of remedial actions, as long as the prospective purchaser complies with the order.

Funds from STCA may be used to assist prospective purchasers to pay for remediation at sites within a redevelopment opportunity zone, when the amount and terms are established in

a settlement agreement and when DOE finds that the funding provides for a substantially more expeditious or enhanced cleanup with public benefits.

Extended Grant Agreements. DOE may use extended grant agreements with local governments to address cleanup at facilities where it is expected to take multiple biennia and the cost exceeds \$20 million. The initial agreement may not exceed ten years and may not provide more than 50 percent of the total eligible cleanup costs. DOE may not allocate future funding to an extended grant agreement unless the local government shows that the funds awarded during the previous biennium were substantially expended.

Ten-Year Financing Plan and Report. DOE must:

- plan to clean up and prevent hazardous waste sites at a pace that matches the estimated cash resources in STCA, LTCA, and ELSA;
- analyze estimated cash resources and consider the annual cash-flow requirements of major projects that receive appropriations expected to cross multiple biennia; and
- include in the report separate budget estimates for large, multi-biennial, clean-up projects that exceed \$10 million.

Radioactive Mixed Waste Account. The Radioactive Mixed Waste Account is created for use by DOE to regulate facilities that treat, store, or dispose of mixed waste or mixed radioactive waste. STCA funds used for radioactive mixed waste are transferred to the new account.

Reports. Every second odd-numbered year, DOE must report on progress made in cleaning up hazardous waste sites to the Legislature and the public. DOE must track requests from reviews of planned and completed independent remedial actions; set performance measures for timely request responses; and submit a report to the Legislature and Governor on meeting the performance measures and recommendations for improving performance and staffing needs.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications):** PRO: We need to make sure MTCA funding goes to cleanup, jobs, and economic development. There needs to be accountability and transparency in the budgeting process. There needs to be review of the effectiveness and efficiency of the programs to maximize the use of the funds. The bill would allow for more dollars to be spent more rapidly. Encouraging the use of model remedies is a great idea. The main purpose of these funds is to prevent and clean up hazardous waste sites. We need to stop diverting money away from the main purpose of MTCA. Money spent on other programs is money not being spent on the clean-up process.

CON: We need to remember the concept that successful cleanup is reliant on reducing toxic substances in the environment, making sure that toxic substances are properly handled, and protection of sites that are cleaned up. MTCA provides for the continued reduction of toxic substances in the environment which is necessary to maintain cleanup of sites. STCA is used in many state programs that deal with hazardous management planning and inspections. The bill would negatively impact the core prevention programs and waste-management activities such as inspections of hazardous management planning waste sites, solid waste planning and inspections of sites, waste generation, oil spill prevention and stormwater source control, and grants to local governments. This would negatively affect core public health functions necessary to protect public health from the effects of toxic substances in the environment. Removing LTCA would directly interfere with ongoing site cleanups. The bill could result in unintended elimination of some jobs.

OTHER: We like the unquestionable support to cleanup. It is unclear as to the impacts to currently ongoing projects. There needs to be a conversation on how the dollars are spent.

**Persons Testifying (Energy, Environment & Telecommunications):** PRO: Greg Hanon, Western States Petroleum Assn.; Brandon Houskeeper, Assn. of WA Business.

CON: Jim Pendowski, DOE; Maryanne Guichard, Dept. of Health; Art Starry, Thurston County Public Health, WA State Environmental Health Directors; Rod Brown, WA Environmental Council; Kerry Graber, WA Federation of State Employees.

OTHER: Johan Hellman, WA Public Ports Assn.; Carl Schroeder, Assn. of WA Cities.

**Staff Summary of Public Testimony as Heard in Committee (Ways & Means):** PRO: This bill works to reprioritize MTCA to get people to work and clean up hazardous sites. This bill will put more money into projects and expedite the cleanup of the most contaminated toxic sites in the state. Stormwater is a priority and this bill covers the investment in stormwater. Cleaning up sites will increase property values. It is important to focus the funds on the priority projects and not transfer the funds to the general fund and other areas.

CON: This bill takes the will of the people and circumvents it. The bill needs to have a clear statement of what is in and out for projects. The public participation grants are eliminated, which decreases citizen participation and involvement. The Coordinated Prevention Grants for solid waste are shifted into the new category E funding. Key prevention programs are jeopardized. The bill is confusing and puts programs at risk.

OTHER: The new account will provide more certainty for long-term funding. A study by the Joint Legislative Audit and Review Committee should be conducted to see what was achieved under MTCA. The prioritization of funds should be done through the budgeting process.

**Persons Testifying (Ways & Means):** PRO: Senator Ericksen, prime sponsor; Brandon Houskeeper, Assn. of WA Business; Greg Hannon, Western States Petroleum Assn.; Johan Hellman, WA Public Ports Assn.; Jerry Smedes, NW Environmental Business Council.

CON: Dolores Mitchell, WA Federation of State Employees; Erik Fairchild, DOE; Bruce Wishart, Sierra Club, Puget Soundkeeper; Darcy Nonemacher, WA Environmental Council; Suellen Mele, Zero Waste WA.

OTHER: Laura Merrill, WA State Assn. of Counties; Art Starry, Thurston County Public Health; John Sherman, Tacoma-Pierce County Health Dept.; Jim Cahill, Office of Financial Management; Carl Schroeder, Assn. of WA Cities.