

# SENATE BILL REPORT

## SB 5209

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As of March 31, 2015

**Title:** An act relating to a hazardous substance tax exemption for certain hazardous substances defined under RCW 82.21.020(1)(c) that are used as agricultural crop protection products and warehoused but not otherwise used, manufactured, packaged, or sold in this state

**Brief Description:** Concerning a hazardous substance tax exemption for certain hazardous substances defined under RCW 82.21.020(1)(c) that are used as agricultural crop protection products and warehoused but not otherwise used, manufactured, packaged, or sold in this state.

**Sponsors:** Senators Warnick, Hatfield, Padden, Schoesler, Hobbs and Hewitt.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 2/05/15, 2/12/15 [DPS-WM].  
Ways & Means: 3/25/15.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5209 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Warnick, Chair; Dinsel, Vice Chair; Hatfield, Ranking Minority Member; Hobbs and Honeyford.

**Staff:** Diane Smith (786-7410)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dean Carlson (786-7305)

**Background:** The tax imposed on hazardous substances was initiated in the late 1980s, first by the Legislature and then by Initiative 97.

The tax base of the hazardous substance tax created by the Model Toxics Control Act (MCTA) is the wholesale value of substances defined as hazardous. It is a privilege tax imposed on the first possession in Washington State of petroleum products under the federal

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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.*

Comprehensive Environmental Response, Compensation, and Liability Act; pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act; and substances designated by rule by the Washington State Department of Ecology to present a threat to human health or the environment.

The tax rate is 0.7 percent. The proceeds, up to \$140 million since July 1, 2013, are deposited into two accounts: 56 percent to the state toxics control account; and 44 percent to the local toxics control account. Any amount over \$140 million is deposited into the environmental legacy stewardship account. The purpose of MCTA is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters. The 2014 proceeds of \$195,010,885 are \$3,452,782 less than those of 2013.

There are exemptions from the hazardous substance tax, one of which includes persons and activities that the state is prohibited from taxing under the United States Constitution. This prohibition applies to materials in interstate commerce under article 1, section 8, clause 3, of the Constitution. This clause empowers Congress "to regulate commerce with foreign nations, and among several states, and with the indian tribes."

Agricultural crop protection products that meet the definition of pesticides under MCTA are sometimes manufactured at an out-of-state location and then are shipped to Washington warehouses. Sometimes the product is shipped from the Washington warehouse to a Washington retailer for sale to the Washington farmer or certified pesticide applicator. These products are subject to the hazardous substance tax because they are not items in interstate commerce.

A question has arisen when the product is shipped out of Washington from the warehouse. The Department of Revenue (DOR) rules allow the exemption if the product in the warehouse is already owned by the out-of-state recipient when the product is received at the warehouse. Under any other shipping scenario, DOR levies the tax on the product even though it is ultimately sold out of state.

**Summary of Bill (Recommended Substitute):** An exemption from the hazardous substance tax imposed under MCTA is created. It applies to the possession of an agricultural crop protection product when that possession is solely for use by a farmer or certified pesticide applicator and the product is warehoused in Washington or transported to or from Washington. To qualify for this exemption, the person possessing the product may not use, repackage, manufacture, or sell the product in Washington.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute):** The term agricultural crop protection product is defined to be identical to the current federal definition in the Federal Insecticide, Fungicide and Rodenticide Act. The terms manufacturing and packaged for sale are illustrated by examples.

**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, 2015

**Staff Summary of Public Testimony on Original Bill (Agriculture, Water & Rural Economic Development):** PRO: This bill creates a small exemption. Timing is the key in providing agricultural chemicals; too late and the problem has grown, needing increased applications. Storing chemicals on farms could lead to damage to the environment. Having the chemicals nearby is helpful for on-time applications. This tax drives warehouses out of state.

OTHER: This loss of revenue is not in the Governor's budget. However, much work was done over the summer to refine the bill from last year's version.

**Persons Testifying (Agriculture, Water & Rural Economic Development):** PRO: Senator Warnick, prime sponsor; Jim Fitzgerald, Far West Agribusiness Assn.; Todd Jones, Winfield; Brandon Houskeeper, Assn. of WA Business.

OTHER: Denise Clifford, Dept. of Ecology.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: The bill is consistent with state tax policy which allows a credit for products that leave the state. Products that stay in the state will still be taxed. We have a member that says if this bill goes through they will build another warehouse. Other members are looking to build warehouses outside the state. This makes sense environmentally as it will allow these products to be retained in state-of-the-art warehouses as opposed to being stockpiled on farms.

**Persons Testifying (Ways & Means):** PRO: Tom McBride, Jim Fitzgerald, Far West Agribusiness Assn.; Jim Hedrick, Greater Spokane Incorporated.

**Persons Signed in to Testify But Not Testifying:** No one.