
SUBSTITUTE HOUSE BILL 1399

State of Washington

64th Legislature

2015 Regular Session

By House Capital Budget (originally sponsored by Representatives Hudgins, DeBolt, Dunshee, Tharinger, Short, Smith, and McBride; by request of Department of Ecology)

READ FIRST TIME 02/12/15.

1 AN ACT Relating to annually adjusting the limit on distribution
2 of hazardous substance tax revenues to the state and local toxics
3 control accounts to correct for inflation; and reenacting and
4 amending RCW 70.105D.070 and 70.105D.170.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.105D.070 and 2013 2nd sp.s. c 19 s 7033 and 2013
7 2nd sp.s. c 4 s 992 are each reenacted and amended to read as
8 follows:

9 (1) The state toxics control account and the local toxics control
10 account are hereby created in the state treasury.

11 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as
12 follows: Fifty-six percent to the state toxics control account under
13 subsection (3) of this section and forty-four percent to the local
14 toxics control account under subsection (4) of this section. When the
15 cumulative amount of deposits made to the state and local toxics
16 control accounts under this section reaches the limit during a fiscal
17 year as established in (b) of this subsection, the remainder of the
18 moneys collected under RCW 82.21.030 during that fiscal year must be
19 deposited into the environmental legacy stewardship account created
20 in RCW 70.105D.170.

1 (b)(i) The limit on distributions of moneys collected under RCW
2 82.21.030 to the state and local toxics control accounts for the
3 fiscal year beginning July 1, 2013, is one hundred forty million
4 dollars.

5 (ii) By July 31, 2015, for the fiscal year beginning July 1,
6 2015, and by July 31st for each fiscal year thereafter, the
7 department of revenue must annually increase this limit on
8 distributions of moneys by a percentage rate equal to the lesser of:

9 (A) The most recent final fiscal growth factor as defined in RCW
10 43.135.025(7); or

11 (B) The rate of year-over-year increase in hazardous substance
12 tax revenue, based on the most recent twenty-four months for which
13 reliable actual revenue collection information is available.

14 (iii) If the lesser of the percentage rates in (b)(ii)(A) or (B)
15 of this subsection (2) is zero or less than zero, no adjustment to
16 the limit may result for that fiscal year.

17 (c) In addition to the funds required under (a) of this
18 subsection, the following moneys must be deposited into the state
19 toxics control account: (i) The costs of remedial actions recovered
20 under this chapter or chapter 70.105A RCW; (ii) penalties collected
21 or recovered under this chapter; and (iii) any other money
22 appropriated or transferred to the account by the legislature.

23 (3) Moneys in the state toxics control account must be used only
24 to carry out the purposes of this chapter, including but not limited
25 to the following activities:

26 (a) The state's responsibility for hazardous waste planning,
27 management, regulation, enforcement, technical assistance, and public
28 education required under chapter 70.105 RCW;

29 (b) The state's responsibility for solid waste planning,
30 management, regulation, enforcement, technical assistance, and public
31 education required under chapter 70.95 RCW;

32 (c) The hazardous waste clean-up program required under this
33 chapter;

34 (d) State matching funds required under federal cleanup law;

35 (e) Financial assistance for local programs in accordance with
36 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

37 (f) State government programs for the safe reduction, recycling,
38 or disposal of paint and hazardous wastes from households, small
39 businesses, and agriculture;

1 (g) Oil and hazardous materials spill prevention, preparedness,
2 training, and response activities;

3 (h) Water and environmental health protection and monitoring
4 programs;

5 (i) Programs authorized under chapter 70.146 RCW;

6 (j) A public participation program;

7 (k) Public funding to assist potentially liable persons to pay
8 for the costs of remedial action in compliance with clean-up
9 standards under RCW 70.105D.030(2)(e) but only when the amount and
10 terms of such funding are established under a settlement agreement
11 under RCW 70.105D.040(4) and when the director has found that the
12 funding will achieve both: (i) A substantially more expeditious or
13 enhanced cleanup than would otherwise occur; and (ii) the prevention
14 or mitigation of unfair economic hardship;

15 (l) Development and demonstration of alternative management
16 technologies designed to carry out the hazardous waste management
17 priorities of RCW 70.105.150;

18 (m) State agriculture and health programs for the safe use,
19 reduction, recycling, or disposal of pesticides;

20 (n) Storm water pollution control projects and activities that
21 protect or preserve existing remedial actions or prevent hazardous
22 clean-up sites;

23 (o) Funding requirements to maintain receipt of federal funds
24 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
25 seq.);

26 (p) Air quality programs and actions for reducing public exposure
27 to toxic air pollution;

28 (q) Public funding to assist prospective purchasers to pay for
29 the costs of remedial action in compliance with clean-up standards
30 under RCW 70.105D.030(2)(e) if:

31 (i) The facility is located within a redevelopment opportunity
32 zone designated under RCW 70.105D.150;

33 (ii) The amount and terms of the funding are established under a
34 settlement agreement under RCW 70.105D.040(5); and

35 (iii) The director has found the funding meets any additional
36 criteria established in rule by the department, will achieve a
37 substantially more expeditious or enhanced cleanup than would
38 otherwise occur, and will provide a public benefit in addition to
39 cleanup commensurate with the scope of the public funding;

1 (r) Petroleum-based plastic or expanded polystyrene foam debris
2 cleanup activities in fresh or marine waters;

3 (s) Appropriations to the local toxics control account or the
4 environmental legacy stewardship account created in RCW 70.105D.170,
5 if the legislature determines that priorities for spending exceed
6 available funds in those accounts;

7 (t) During the 2013-2015 fiscal biennium, the department of
8 ecology's water quality, shorelands, environmental assessment,
9 administration, and air quality programs;

10 (u) During the 2013-2015 fiscal biennium, actions at the state
11 conservation commission to improve water quality for shellfish;
12 (~~and~~)

13 (v) During the 2013-2015 fiscal biennium, actions at the
14 University of Washington for reducing ocean acidification;

15 (w) For the 2013-2015 fiscal biennium, moneys in the state toxics
16 control account may be spent on projects in section 3159, chapter 19,
17 Laws of 2013 2nd sp. sess. and for transfer to the local toxics
18 control account; and

19 (x) For the 2013-2015 fiscal biennium, moneys in the state toxics
20 control account may be transferred to the radioactive mixed waste
21 account.

22 (4)(a) The department shall use moneys deposited in the local
23 toxics control account for grants or loans to local governments for
24 the following purposes in descending order of priority:

25 (i) Extended grant agreements entered into under (~~(e)~~) (e)
26 (i) of this subsection;

27 (ii) Remedial actions, including planning for adaptive reuse of
28 properties as provided for under (~~(e)~~) (e)(iv) of this
29 subsection. The department must prioritize funding of remedial
30 actions at:

31 (A) Facilities on the department's hazardous sites list with a
32 high hazard ranking for which there is an approved remedial action
33 work plan or an equivalent document under federal cleanup law;

34 (B) Brownfield properties within a redevelopment opportunity zone
35 if the local government is a prospective purchaser of the property
36 and there is a department-approved remedial action work plan or
37 equivalent document under the federal cleanup law;

38 (iii) Storm water pollution source projects that: (A) Work in
39 conjunction with a remedial action; (B) protect completed remedial

1 actions against recontamination; or (C) prevent hazardous clean-up
2 sites;

3 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

4 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
5 70.95I, and 70.105 RCW;

6 (vi) Petroleum-based plastic or expanded polystyrene foam debris
7 cleanup activities in fresh or marine waters; and

8 (vii) Appropriations to the state toxics control account or the
9 environmental legacy stewardship account created in RCW 70.105D.170,
10 if the legislature determines that priorities for spending exceed
11 available funds in those accounts.

12 (b) Funds for plans and programs must be allocated consistent
13 with the priorities and matching requirements established in chapters
14 70.105, 70.95C, 70.95I, and 70.95 RCW.

15 (c) During the 2013-2015 fiscal biennium, the local toxics
16 control account may also be used for local government storm water
17 planning and implementation activities.

18 (d) During the 2013-2015 fiscal biennium, the legislature may
19 transfer from the local toxics control account to the state general
20 fund, such amounts as reflect the excess fund balance in the account.

21 (e) To expedite cleanups throughout the state, the department may
22 use the following strategies when providing grants to local
23 governments under this subsection:

24 (i) Enter into an extended grant agreement with a local
25 government conducting remedial actions at a facility where those
26 actions extend over multiple biennia and the total eligible cost of
27 those actions exceeds twenty million dollars. The agreement is
28 subject to the following limitations:

29 (A) The initial duration of such an agreement may not exceed ten
30 years. The department may extend the duration of such an agreement
31 upon finding substantial progress has been made on remedial actions
32 at the facility;

33 (B) Extended grant agreements may not exceed fifty percent of the
34 total eligible remedial action costs at the facility; and

35 (C) The department may not allocate future funding to an extended
36 grant agreement unless the local government has demonstrated to the
37 department that funds awarded under the agreement during the previous
38 biennium have been substantially expended or contracts have been
39 entered into to substantially expend the funds;

1 (ii) Enter into a grant agreement with a local government
2 conducting a remedial action that provides for periodic reimbursement
3 of remedial action costs as they are incurred as established in the
4 agreement;

5 (iii) Enter into a grant agreement with a local government prior
6 to it acquiring a property or obtaining necessary access to conduct
7 remedial actions, provided the agreement is conditioned upon the
8 local government acquiring the property or obtaining the access in
9 accordance with a schedule specified in the agreement;

10 (iv) Provide integrated planning grants to local governments to
11 fund studies necessary to facilitate remedial actions at brownfield
12 properties and adaptive reuse of properties following remediation.
13 Eligible activities include, but are not limited to: Environmental
14 site assessments; remedial investigations; health assessments;
15 feasibility studies; site planning; community involvement; land use
16 and regulatory analyses; building and infrastructure assessments;
17 economic and fiscal analyses; and any environmental analyses under
18 chapter 43.21C RCW;

19 (v) Provide grants to local governments for remedial actions
20 related to area-wide groundwater contamination. To receive the
21 funding, the local government does not need to be a potentially
22 liable person or be required to seek reimbursement of grant funds
23 from a potentially liable person;

24 (vi) The director may alter grant matching requirements to create
25 incentives for local governments to expedite cleanups when one of the
26 following conditions exists:

27 (A) Funding would prevent or mitigate unfair economic hardship
28 imposed by the clean-up liability;

29 (B) Funding would create new substantial economic development,
30 public recreational opportunities, or habitat restoration
31 opportunities that would not otherwise occur; or

32 (C) Funding would create an opportunity for acquisition and
33 redevelopment of brownfield property under RCW 70.105D.040(5) that
34 would not otherwise occur;

35 (vii) When pending grant applications under ~~((e)-(e))~~ (e)(iv)
36 and (v) of this subsection (4) exceed the amount of funds available,
37 designated redevelopment opportunity zones must receive priority for
38 distribution of available funds.

39 ~~((d)-(f))~~ (f) To expedite multiparty clean-up efforts, the
40 department may purchase remedial action cost-cap insurance. For the

1 2013-2015 fiscal biennium, moneys in the local toxics control account
2 may be spent on projects in sections 3024, 3035, 3036, and 3059,
3 chapter 19, Laws of 2013 2nd sp. sess.

4 (5) Except for unanticipated receipts under RCW 43.79.260 through
5 43.79.282, moneys in the state and local toxics control accounts may
6 be spent only after appropriation by statute.

7 (6) No moneys deposited into either the state or local toxics
8 control account may be used for: Natural disasters where there is no
9 hazardous substance contamination; high performance buildings; solid
10 waste incinerator facility feasibility studies, construction,
11 maintenance, or operation; or after January 1, 2010, for projects
12 designed to address the restoration of Puget Sound, funded in a
13 competitive grant process, that are in conflict with the action
14 agenda developed by the Puget Sound partnership under RCW 90.71.310.
15 However, this subsection does not prevent an appropriation from the
16 state toxics control account to the department of revenue to enforce
17 compliance with the hazardous substance tax imposed in chapter 82.21
18 RCW.

19 (7) Except during the 2011-2013 fiscal biennium, one percent of
20 the moneys collected under RCW 82.21.030 shall be allocated only for
21 public participation grants to persons who may be adversely affected
22 by a release or threatened release of a hazardous substance and to
23 not-for-profit public interest organizations. The primary purpose of
24 these grants is to facilitate the participation by persons and
25 organizations in the investigation and remedying of releases or
26 threatened releases of hazardous substances and to implement the
27 state's solid and hazardous waste management priorities. No grant may
28 exceed sixty thousand dollars. Grants may be renewed annually. Moneys
29 appropriated for public participation that are not expended at the
30 close of any biennium revert to the state toxics control account.

31 (8) The department shall adopt rules for grant or loan issuance
32 and performance. To accelerate both remedial action and economic
33 recovery, the department may expedite the adoption of rules necessary
34 to implement chapter 1, Laws of 2013 2nd sp. sess. using the
35 expedited procedures in RCW 34.05.353. The department shall initiate
36 the award of financial assistance by August 1, 2013. To ensure the
37 adoption of rules will not delay financial assistance, the department
38 may administer the award of financial assistance through interpretive
39 guidance pending the adoption of rules through July 1, 2014.

1 (9) Except as provided under subsection (3)(k) and (q) of this
2 section, nothing in chapter 1, Laws of 2013 2nd sp. sess. (~~effects~~
3 ~~{affects}~~) affects the ability of a potentially liable person to
4 receive public funding.

5 (10) During the 2013-2015 fiscal biennium the local toxics
6 control account may also be used for the centennial clean water
7 program and for storm water grants.

8 **Sec. 2.** RCW 70.105D.170 and 2013 2nd sp.s. c 28 s 1, 2013 2nd
9 sp.s. c 19 s 7042, and 2013 2nd sp.s. c 4 s 991 are each reenacted
10 and amended to read as follows:

11 (1) The environmental legacy stewardship account is created in
12 the state treasury. Beginning July 1, 2013, and every fiscal year
13 thereafter, the annual amount received from the tax imposed by RCW
14 82.21.030 that exceeds (~~one hundred forty million dollars~~) the
15 limit on distributions of moneys set forth in RCW 70.105D.070(2)(b)
16 must be deposited into the environmental legacy stewardship account.
17 The state treasurer may make periodic deposits into the environmental
18 legacy stewardship account based on forecasted revenue. Moneys in the
19 account may only be spent after appropriation.

20 (2) Moneys in the environmental legacy stewardship account may be
21 spent on:

22 (a) Grants or loans to local governments for performance and
23 outcome-based projects, model remedies, demonstration projects,
24 procedures, contracts, and project management and oversight that
25 result in significant reductions in the time to complete compared to
26 baseline averages;

27 (b) Purposes authorized under RCW 70.105D.070 (3) and (4);

28 (c) Grants or loans awarded through a competitive grant program
29 administered by the department to fund design and construction of
30 low-impact development retrofit projects and other high quality
31 projects that reduce storm water pollution from existing
32 infrastructure. The competitive grant program must apply criteria to
33 review, rank, and prioritize projects for funding based on their
34 water quality benefits, ecological benefits, and effectiveness at
35 reducing environmental degradation; and

36 (d) Cleanup and disposal of hazardous substances from abandoned
37 or derelict vessels, defined for the purposes of this section as
38 vessels that have little or no value and either have no identified
39 owner or have an identified owner lacking financial resources to

1 clean up and dispose of the vessel, that pose a threat to human
2 health or the environment.

3 (3) Except as provided under RCW 70.105D.070(3) (k) and (q),
4 nothing in chapter 1, Laws of 2013 2nd sp. sess. expands the ability
5 of a potentially liable person to receive public funding.

6 (4) Moneys in the environmental legacy stewardship account may
7 also be used as follows:

8 (a) During the 2013-2015 fiscal biennia, shoreline update
9 technical assistance and for local government shoreline master
10 program update grants;

11 (b) During the 2013-2015 fiscal biennium, solid and hazardous
12 waste compliance at the department of corrections;

13 (c) During the 2013-2015 fiscal biennium, activities at the
14 department of fish and wildlife concerning water quality monitoring,
15 hatchery water quality regulatory compliance, and technical
16 assistance to local governments on growth management and shoreline
17 management;

18 (d) During the 2013-2015 fiscal biennium, forest practices
19 regulation and aquatic land investigation and cleanup activities at
20 the department of natural resources.

21 (5) For the 2013-2015 fiscal biennium, moneys in the
22 environmental legacy stewardship account may be transferred to the
23 local toxics control account.

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