HOUSE BILL REPORT
SHB 2182

As Passed House:
April 12, 2017

Title: An act relating to creating the tiered taxation on hazardous substance possession to provide for the current program's immediate needs and a more stable source of revenue in the future act of 2017.

Brief Description: Relating to providing a tiered tax on the possession of hazardous substances to provide for the current program's immediate needs and a more stable source of revenue in the future.

Sponsors: House Committee on Capital Budget (originally sponsored by Representative Peterson).

Brief History:
Committee Activity:
Capital Budget: 4/4/17, 4/7/17 [DPS].
Floor Activity:
Passed House: 4/12/17, 50-47.

Brief Summary of Substitute Bill

- Establishes a tiered rate for the Hazardous Substance tax based on specific thresholds for fiscal years 2018 through 2025.
- Requires the Department of Ecology, in consultation with the Department of Revenue, to provide reports every two years regarding revenues, projected operating, and capital demand related to cleanup and stormwater projects.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; Macri, Morris, Reeves, Riccelli, Ryu, Sells and Stonier.

Minority Report: Do not pass. Signed by 6 members: Representatives Johnson, Koster, Kraft, MacEwen, Steele and J. Walsh.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member.

Staff: Melissa Palmer (786-7388).

Background:

Model Toxics Control Act.
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 it authorizes the DOE to conduct certain pollution prevention activities. Under the MTCA, the State Toxics Control Account (STCA) and the Local Toxics Control Account (LTCA) provide for hazardous and solid waste planning, contaminated site cleanup grants to local governments, and other activities related to hazardous waste prevention, management, and remediation. The Environmental Legacy Stewardship Account (ELSA), created in 2013, provides grants or loans to local governments for performance and outcome-based projects, model remedies, demonstrated technologies, procedures, contracts, and project management and oversight that result in significant reductions in the average time spent to complete other authorized projects.

Hazardous Substance Tax.
There is a privilege tax on the first possession of hazardous substances in Washington. Hazardous substances include petroleum products, pesticides, and certain chemicals determined by the DOE to present a threat to human health or the environment if released into the environment.

The Hazardous Substance Tax (HST) is based on the wholesale value of the hazardous product. The tax rate is 0.7 percent. All receipts from this tax are distributed as follows:

- 56 percent of the first $140 million per fiscal year to the STCA;
- 44 percent of the first $140 million per fiscal year to the LTCA; and
- any amount collected over $140 million per fiscal year to the ELSA.

In fiscal year (FY) 2013 the HST collected over $198 million. In subsequent FY that amount declined. In FY 2016 the HST collections were $113.2 million.

Summary of Substitute Bill:

The HST is revised. For FYs 2018 through 2025 an annual tiered tax rate on hazardous substances is established based on tiered thresholds. The tiered rates are as follows: 0.9 percent until HST revenues collected in the fiscal year reach $110 million; 0.7 percent until HST revenues collected in the fiscal year reach $170 million; and 0.21 percent until the first day of the next fiscal year. The Department of Revenue (DOR) must adjust the thresholds on a biennial basis by the fiscal growth factor, as computed by the Expenditure Limit Committee. The DOR must provide notice as soon as practicable on its website of changes to the rate. The DOE, in consultation with the DOR, must provide a report by October 1 of 2018, 2020, 2022, and 2024. The report must include: operating and capital projected demand, including lists and cost estimates, for cleanup projects and stormwater projects, and include other financing or revenues used for stormwater projects. It must also include an overview of general costs and a timeline to complete projects related to clean up and stormwater, projected revenues under the flat rate, and projected revenues under the tiered rate.

Appropriation: None.

Fiscal Note: Requested on April 11, 2017.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony:

(In support) The goal of the policy is to create stability and have a defined band of revenues into the MTCA accounts. When oil prices were skyrocketing, there was added anxiety and added costs at the pump. A tiered tax approach can offer a tax cut in the out years. It is difficult to predict the price of petroleum in a few years, but the DOR has a robust method to inform its estimates. The top and bottom thresholds were set by looking at past trends and cleanup and prevention needs. In combination with other actions, this approach would fix the shortfall in the MTCA accounts and provide more stable revenue going forward. This proposal provides stability in revenues while making investments in local infrastructure. A number of projects were delayed after the revenue declined. There is a concern about a major loss in revenue in the future if the tiered tax structure is extended. When a larger tax increase for the HST was contemplated a few years ago, the DOR found that the impact on fuel would be a wash. This adjustment is not as large as what the adjustment previously considered. The Port of Everett is in the position of having the most consent decrees compare to any other port in Washington. Because of this, there is support for the bill. In the past, the sweeping and oversubscribing of the MTCA accounts created problems, and it is clear there needs to be a short-term solution. This approach is a mechanism to stabilize the MTCA revenues so that the agency can provide predictable assistance. Stable funding would allow for the DOE to provide timely, reliable services to the public. In the late 1980s it was thought that the cleanup work would be done after 10 to 20 years, but every year there are new toxic sites discovered. Additionally, stormwater threatens sites that were previously cleaned up. It is important to maintain the six-year cap on the tiered rate structure and reevaluate the program. The DOE provides regular updates on the demands. The demand and the revenues should be looked at side-by-side. The demand for the MTCA should be assumed to grow. Demand has grown from 550 cleanup sites to over 12,000 sites. Another key part of the MTCA is pollution prevention and control. In looking at MTCA demands, it is important to include the operating budget and linking the cleanup and prevention needs to communities impacted by the sites. Stormwater causes 75 percent of the pollution in the Puget Sound and is nearly 100 percent fatal to salmon. Funding stormwater assistance is the number one priority for the Puget Sound Partnership.

(Opposition) This proposal would increase MTCA taxes over the next four years. It is a flawed approach; the tiered tax structure only lasts until the revenues begin decreasing. The hazardous substance tax is robust and continues to grow. A large reason for the shortfall is that the MTCA accounts are used to backfill the State General fund. The $170 million threshold in this bill is arbitrary. There have been very few years where the annual collections exceed this amount. This threshold sets the expectation at the high level.

Additionally, the first threshold is set at $110 million but is increased 4 to 5 percent every time the threshold is adjusted. The thresholds in the bill are moving targets because they are increased by the fiscal growth factor. The bill is described as a smoothing mechanism, however it doesn't continue the policy after FY 2023. If it did continue, the revenue would be reduced by $100 million in the following biennium. The increased tax on farmers' fuel would result in increased costs to produce food. Additionally, this would increase costs for fertilizer and pesticides. These are all necessary to grow crops. Farmers only make a profit every one to two years over a 10-year period. Any increase to the farm inputs would erode any profit, even in the good years. This could contribute to smaller farms going out of business. A better solution would be to spend less to target MTCA spending and not use MTCA revenues to backfill the DOE's budget. The need for stormwater projects far exceeds MTCA revenues. Additionally, the DOE is going through a rulemaking process to adjust wastewater and stormwater discharge fees. This approach just offers a smoothing mechanism for the government, but would create uncertainty for business. Even with this change, MTCA spending is projected to far exceed the revenues available.

(Other) The remedial action grants are critical. The ports can support some form of revenue but do have reservations. All the revenue should be refocused on core MTCA work. Current budget language makes remedial action the lowest priority, and this is a concern.

Persons Testifying: (In support) Representative Peterson, prime sponsor; Denise Clifford, Washington Department of Ecology; Carl Schroeder, Association of Washington Cities; Jim Hedrick, Port of Everett; Eugene Radcliff, Washington Federation of State Employees; Bruce Wishart, Puget Sound Keeper Alliance, and Sierra Club; Neil Beaver, Washington State Lands Council; Darcy Nonemacher, Washington Enviromental Council; and Jeff Parsons, Puget Sound Partnership.

(Opposed) Greg Hanon, Washington States Petroleum Association; Dan Coyn, Washington State Council of Farmer Cooperatives; Mary Catherine McAleer, Association of Washington Business; Tom Davis, Washington State Farm Bureau; and Heather Hansen, Washington Friends of Farms and Forests.

(Other) Gerry O'Keefe, Washington Ports Association.

Persons Signed In To Testify But Not Testifying: None.