HOUSE BILL REPORT
ESSB 5993

As Passed House:
April 27, 2019

Title: An act relating to reforming the financial structure of the model toxics control program.

Brief Description: Reforming the financial structure of the model toxics control program.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Frockt, Billig, Liias and Hunt).

Brief History:
Committee Activity:
Finance: 4/27/19 [DPA].
Floor Activity:
Passed House: 4/27/19, 50-48.

Brief Summary of Engrossed Substitute Bill

- Excludes certain petroleum products from the tax rate of 0.7 percent on the wholesale value applied to hazardous substances subject to the Hazardous Substance Tax (HST), and instead applies an HST rate that begins at $1.09 per barrel in 2019 to those petroleum products.
- Eliminates the three accounts created under the Model Toxics Control Act (MTCA) used to spend HST funds, and instead establishes three new accounts focused on operating budget, capital budget, and stormwater expenditures.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 8 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Orwall, Springer and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Morris, Stokesbary and Vick.

Staff: Tracey O'Brien (786-7152).

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.

Background:

Model Toxics Control Act Accounts.
The Model Toxics Control Act (MTCA), which is administered and enforced by the Department of Ecology (ECY), requires liable parties to clean up sites contaminated with hazardous substances, and authorizes the ECY 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. In 2013 amendments to the MTCA established a third MTCA Account: the Environmental Legacy Stewardship Account (ELSA).

Funds in each of the three MTCA accounts may be spent on specified state and local environmental, natural resource, and transportation programs. Money in the STCA may be spent on over 20 specified programs, including the following ECY programs and activities: hazardous waste; contaminated site (MTCA) cleanup; financial assistance for local solid and hazardous waste programs; and oil and hazardous substances spills. Money in the LTCA may be spent on grants or loans to local governments for contaminated site cleanup, stormwater projects, hazardous and solid waste programs, and other local government activities. Money in the ELSA may be used for grants or loans to local governments for certain cleanup programs, for any purposes for which LTCA or STCA uses are authorized, and for certain other uses.

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 ECY 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 the HST 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.

One percent of the HST revenues are dedicated to public participation grants to persons potentially affected by hazardous substance releases and nonprofit public interest organizations.

Other.
A number of state environmental laws reference one or more of the MTCA accounts.

The United States Department of Commerce's Bureau of Economic Analysis publishes implicit price deflators that measure inflation based on changes to prices of consumer goods.

Summary of Amended Bill:

Hazardous Substance Tax.
Beginning July 1, 2019, petroleum products that are capable of being easily measured on a per-barrel basis are no longer subject to the 0.7 percent tax rate on the wholesale value of hazardous substances, and are instead subject to a rate of $1.09 per barrel. This $1.09 rate must be annually adjusted by the Department of Revenue (DOR) beginning July 1, 2020, to reflect the percentage change in the implicit price deflator for nonresidential structures published by the United States Department of Commerce's Bureau of Economic Analysis for the most recent calendar year.

The DOR must compile and publish on its website a list of petroleum products that are not easily measured on a per-barrel basis, and which instead remain subject to the 0.7 percent HST rate on the product's wholesale value. In developing this list, the DOR may accept technical assistance from petroleum product distributors, marketers, and sellers or other outside resources.

The tax on petroleum products identified by the DOR as being easily measured on a per-barrel basis is distributed to three MCTA accounts. However, until the enactment of a transportation funding act which combines new revenues exceeding $2 billion per biennium are deposited into the Motor Vehicle Fund or the multimodal transportation account during the ensuing biennium, the first $50 million of petroleum product HST revenues are distributed to the Motor Vehicle Fund for transportation stormwater activities and projects, prior to any petroleum product HST revenues being distributed to the three MTCA accounts.

One percent of HST revenues remain allocated to public participation grants.

Model Toxic Control Accounts.
The ELSA, STCA, and LTCA accounts are eliminated, and replaced with three newly created accounts: the Model Toxics Control Operating Account (Operating account), the Model Toxics Control Capital Account (Capital account), and the Model Toxics Control Stormwater Account (Stormwater account). Expenditures that are currently authorized to be funded from the ELSA, the STCA, and the LTCA are instead authorized to be funded from the Operating, Capital, or Stormwater accounts. Money in the Operating, Capital, and Stormwater accounts may generally only be spent after appropriation.

Operating Account.
The Operating account receives 60 percent of HST revenues from petroleum products that are capable of being measured on a per-barrel basis.

The Operating account may be used for the following activities and programs:
- hazardous waste planning and management;
- solid waste planning and management;
- MTCA hazardous waste cleanup;
- state matching funds under federal cleanup law;
- financial assistance for local solid waste, hazardous waste, and related programs;
- state government programs for paint and hazardous waste reduction, recycling, and disposal;
- oil and hazardous material spills;
- water and environmental health protection and monitoring;

- public participation;
- alternative hazardous waste management technology development and demonstration;
- state agriculture and health pesticide programs;
- funding requirements to maintain receipt of federal funds under federal solid waste disposal laws;
- air quality; and
- plastic and expanded polystyrene foam debris cleanup.

Residual balances in the repealed STCA must be transferred to the Operating account.

Capital Account.
The Capital account receives funds from several sources:
- all HST revenues from products other than petroleum products;
- all HST revenues from petroleum products that are not easily measured on a per-barrel basis;
- 25 percent of petroleum product HST revenue;
- remedial action costs recovered under the MTCA;
- penalties recovered under the MTCA; and
- other funds.

The Capital account may be used for the following purposes:
- the improvement, rehabilitation, remediation, and cleanup of toxic sites and capital-related program and activity expenditures; and
- MTCA capital projects and activities, including financial assistance to local governments and persons for MTCA capital projects and activities.

Model Toxics Control Act capital projects and activities include, generally in descending order of priority:
- remedial actions, including, in generally descending order of priority: extended grant agreements; grants or loans to local governments for MTCA remediation; the ECY-conducted remedial actions; grants to persons intending to remediate contaminated property for affordable housing developments; public funding for persons under settlement agreements to pay for remediation costs; public funding for prospective purchasers to clean up certain properties; and funds to expedite multi-party cleanup efforts;
- grants, loans, or contracts to local governments for solid waste plans and programs;
- toxic air pollutant reduction programs, including woodstove and diesel programs;
- grants, loans, or contracts to local governments for hazardous waste plans and programs, including chemical action plan implementation; and
- plastic and expanded polystyrene foam debris cleanup.

Authority for the ECY under the LTCA to implement extended grant agreements with local governments for certain remedial actions is retained under the Capital account. Requirements for such extended grant agreements are revised, including requiring local governments to obtain all of the required permits for the action within one year of the effective date of an enacted budget.

Residual balances in the repealed LTCA must be transferred to the Capital account.

The Stormwater Account.
The Stormwater account receives 15 percent of HST revenues from petroleum products that are easily measured on a per-barrel basis. The Stormwater account may be used for operating and capital programs, activities, and projects relating to stormwater, including Operating or Capital account programs related to stormwater, stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent cleanup sites and stormwater financial assistance to local governments.

Residual balances in the repealed ELSA must be transferred to the Stormwater account.

Other.
The Office of Financial Management (OFM) and the Legislative Evaluation and Accountability Program (LEAP) Committee, in consultation with legislative fiscal staff, must identify changes to existing budgeting and reporting systems that will improve access to and understanding of relevant MTCA account-related information when budgets are released by the Legislature or the Governor. Proposed improvements and necessary funding or legislative changes must be identified by September 2020. Low or no-cost changes must be implemented by the OFM and LEAP during the 2019-2021 biennium.

Model Toxics Control Act and non-MTCA statutes that provide for the distribution of penalties or otherwise reference the ELSA, STCA, or LTCA accounts are updated to instead reference the Operating, Capital, or Stormwater accounts. These updates include directing penalties into the Operating account rather than the STCA for violations of the following laws:

- polyfluoroalkyl substance (PFAS) firefighting foam;
- mercury products;
- the Children's Safe Products Act;
- polybrominated diphenyl ether (PBDE) flame retardants;
- lead wheel weights;
- motor vehicle brake material;
- Bisphenol-A in consumer products; and
- the use of antifouling vessel paints.

Appropriation: None.

Fiscal Note: Requested on April 26, 2019.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony:

(In support) The MTCA has four main purposes: cleanup, prevention, control and management of pollution, and community grants. Each biennium, there is demand for project funds for these purposes that exceed $585 million. This bill takes a serious step to meet the state's needs. Although diversion of funds continues to be a concern, this bill increases the accountability and transparency in the use of the MTCA. In addition, it clarifies the uses and actual purpose of each of the accounts.

The current HST on petroleum is inadequate and volatile. A per-barrel rate is more predictable and reliable than the value-based tax.

There is a "bang for the buck" with MTCA as the site clean-up funds are often leveraged with local or federal matching funds. These restoration projects create jobs, add to the tax base, and contribute to the livability of communities.

There has been a change to the approach to managing stormwater over the decades. Originally, the focus was to divert stormwater off the roads and into streams to prevent flooding. Since the mid-1990s, the approach to stormwater management has changed and as a result, local governments are having to retrofit stormwater systems to decrease pollution contamination. There has been a search to find a designated funding source for these types of projects since 2009. This bill provides the much needed dedicated funding for stormwater projects.

Petroleum poses a significant risk of pollution, including in stormwater. Therefore, this tax is appropriate. The oil industry has an effective tax rate from the HST and the business and occupation tax of 1.1 percent. This tax rate is less compared to many of the state's other industries. Moreover, oil companies have benefited from the 2017 federal tax changes.

(Opposed) It is laudable that this bill attempts to improve the stability of the MTCA by moving from a value-based tax to a volume-based tax. It is also notable that the bill contains MTCA reforms and accountability provisions. However, this bill imposes a massive tax increase on Washington refineries and puts these refineries at a competitive disadvantage. It is, in fact, a 50 percent increase in the HST and contains automatic annual increases. No other tax contains a provision that automatically increases the tax rate without further legislative action.

These higher costs could mean higher fuel costs and will hurt Washington consumers, small businesses, and family farms. Washington refineries provide over 2,100 workers. This bill not only risks these direct jobs, but thousands of contractor jobs and other dependent jobs in the community.

Finally, the instability of MTCA is due in part to the Legislature's continued diversion of MTCA funds into the State General Fund. Model Toxics Control Act funds are already insufficient to meet the demand and the diversion of these funds only compounds the problem. Until this practice ends, any discussion of a tax increase is inappropriate.

(Other) The State of Washington is already out of compliance with federal laws governing the taxation of aviation fuels by directing HST revenues to MTCA. The Federal Aviation Act requires state or local taxes imposed on aviation fuel to go toward funding airports or the state's aviation programs. This bill could put the state even more out of compliance with federal law.

Persons Testifying: (In support) Darcy Nonemacher, Washington Environmental Council; Gerry O'Keefe, Washington Public Ports Association; Carl Schroeder, Association of Washington Cities; and Paul Jewell, Washington State Association of Counties.

(Opposed) Greg Hanon, Western States Petroleum Association; Dan Coyne, Northwest Agricultural Cooperative Council, Food Northwest; and Peter Godlewski, Association of Washington Business.

(Other) Diana Birkett Rakow, Alaska Airlines.

Persons Signed In To Testify But Not Testifying: None.