SENATE BILL REPORT
SB 5993

As Reported by Senate Committee On:
Ways & Means, April 18, 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: Senators Frockt, Billig, Liias and Hunt.

Brief History:
Committee Activity: Ways & Means: 3/27/19, 4/18/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Changes the hazardous substance tax (HST) on petroleum products to a volumetric rate of $1.39 per 42-gallon barrel.
- Replaces the existing Model Toxics Control Act (MTCA) accounts with operating, capital and stormwater accounts; HST revenue will be allocated 45 percent for operating, 40 percent for capital and 15 percent for stormwater.
- Adjusts the volumetric rate each year by the implicit price deflator for nonresidential construction
- Specifies qualifying operating budget programs and capital budget projects for each account.
- Directs OFM and LEAP to modify budgeting and reporting systems to document MTCA account, appropriation and project information.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5993 be substituted therefor, and the substitute bill do pass.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

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.

Signed by Senators Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Richard Ramsey (786-7412)

Background: The state MTCA is administered by the Department of Ecology to ensure that the vast majority of sites at which hazardous substances were released are cleaned up. MTCA is funded by the HST, 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. Approximately 95 percent of the revenue derives from the HST on petroleum products. The State Toxic Control Account (SCTA) receives 56 percent of the revenue obtained from the HST; the Local Toxic Control Account (LTCA) receives 44 percent. Once $140 million of the HST is distributed to STCA and LTCA in a year, the remainder is deposited into the Environmental Legacy Stewardship Account (ELSA). One percent of the monies collected by the HST must be allocated for public participation grants.

Summary of Bill (First Substitute): The HST is changed from a value-based tax on petroleum products to a volumetric tax. The rate is $1.39 per 42-gallon barrel. The tax rate for non-petroleum products is not changed. LTCA, STCA, and ELSA are repealed and replaced with the Model Toxics Control Operating Account, the Model Toxics Control Capital Account, and the Model Toxics Control Stormwater Account. Revenue from the HST is allocated to these accounts as follows: 45 percent to the operating account, 40 percent to the capital account and 15 percent to the stormwater account. The Department of Revenue must compile a list of petroleum products that are not easily measured on a per barrel basis. Petroleum products on this list are subject to the 0.7 percent tax on the wholesale value. Beginning July 1, 2020, and each July 1st thereafter, the volumetric portion of the HST is adjusted by the implicit price deflator for nonresidential construction.

The operating account may only be spent in the operating budget to carry out administrative and service activities related to:

- hazardous waste planning;
- solid waste planning;
- hazardous waste clean-up;
- state matching funds required under federal law;
- financial assistance for local governments;
- reduction and recycling of household hazardous wastes;
- oil spill prevention and response;
- water and environmental health protection programs;
- air quality programs; or
- plastic or polystyrene foam clean-up.

The capital account may be spent only in the capital budget and used for the improvement, rehabilitation, remediation, and cleanup of toxic sites.

The stormwater account must be allocated to carry out operating and capital directly related to stormwater projects. The bill enumerates the qualifying programs and projects in the respective budgets.

The Office of Financial Management and the Legislative Evaluation and Accountability Program are directed to modify budgeting and reporting systems to document MTCA account, appropriation and project information.

Specifies that it is the intent of the Legislature to not transfer MTCA accounts to the near general funds in the operating budget in the 2017-19 and 2019-21 fiscal biennia.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Changes the growth in the tax rate from the fiscal growth factor to the implicit price deflator for nonresidential construction.
- Reduces the tax rate from $2.52 per barrel to $1.39 per barrel.
- Modifies the expenditure allocation to the following:
  Operating—45 percent
  Capital—40 percent
  Stormwater—15 percent
- Adds an intent section that specifies there will be no transfers from the MTCA accounts to the operating budget in 2017-19 or 2019-21 biennia.
- Restricts Ecology from disbursing remedial action grants unless the applicants have received all necessary permits.
- Replaces reporting language on the Governor's proposed and enacted budgets related to MTCA accounts with direction to OFM and LEAP to modify budgeting and reporting systems to document MTCA account, appropriation, and project information.
- Removes the expiration of the exclusion relating to agricultural hazardous substances; the expiration is current law under the tax preferences statute, RCW 82.32.805.

Appropriation: None.

Fiscal Note: Requested on March 25, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2019.

Staff Summary of Public Testimony: PRO: Port districts were created to be an economic engine for their communities. MTCA funding supports this purpose for ports to voluntarily take on clean up of contaminated land and toxic sites. MTCA funds are matched dollar-for-dollar to attract private investment that creates jobs and growth in a tax base that supports schools and vital services for our communities. MTCA funding provides a double benefit where ports and others have restored and protected habitat in the near shore where we have a greatest biodiversity. Our members are dismayed at the recent history of mingling MTCA funds between operating and capital budget; too often this has resulted in reduced project appropriations. We will be pleased to see this practice come to an end. Ports are reluctant to enter debates about new revenues; however, we do so here because of the tangible benefits created by the MTCA program.

We really appreciate the attempt to provide stability in revenue. We have huge needs in stormwater. We have been working for ten years to secure a dedicated funding source to address the greatest pollution challenge for Western Washington and a significant one for Eastern Washington. We appreciate that the revenue has been pegged at the demonstrated need to address these long-term pollution challenges.

As counties, our primary interest is in funding local solid waste management and enforcement programs. These program protect human health and the environment. We appreciate the intent to move financial support for these program from the capital budget to the operating budget.

We support the proposed reforms to stabilize the revenue and protect the use of the funds. The amount of revenue has not met demand for some time. Cleanup projects have been delayed and the variability in the fund makes the future uncertain. We are in the phase of the Duwamish cleanup that requires stable and reliable state support.

The law has 4 critical purposes: cleans up toxic sites, prevents pollution, controls pollution and enables public participation. We need to have progress on all of these tasks, otherwise our progress gets undermined. Eight-five percent of the toxic sites involve petroleum contamination. We think this is a sound approach to involve the petroleum industry.

With the initiative passed in 1988 we had 542 clean-up sites. Today that has grown to 13,000 sites. About 7000 sites have been cleaned up, we have about 6000 to go. Stormwater was added to the MTCA law in 2013. This was a concern for the environmental community because there was no source of funding. We saw stormwater projects against toxics sites.

Instead of using bonds to pay for toxics and stormwater, this revenue will enable you to address other priorities in the capital budget.

This bill increases revenue to address high priority environmental and public health needs across the state. In Ecology's 10-year program, there are 133 sites that cost $1 billion in state funds to clean up. There are 200-300 sites added each year. Over the two biennia, the legislature has used over $219 million in bond proceeds to fund MTCA activities.

MTCA supports environmental health programs in the Department of Health and pesticide regulation and cleanup and farmworker training program in the Department of Agriculture. Twelve percent of the operating funds go to local governments.

This bill will clean-up the confusion associated with getting funding for toxic remediation. This bill allows for the certainty we need to proceed with very large cleanups. The state funding piece is a really important part of cleanups. The community participates through utility rates and property taxes.

CON: We are opposed to the sizeable tax increase. We are committed to working to insure that the MTCA resources are directed at the original purpose of cleaning up toxic contamination. The proposal represents a net tax increase of about $500 million per year. The oil industry's total tax burden in 2017 was $231 million. Our 2,000 workers receive average compensation of $185,000 per year. The multiplier for each of these jobs is 11, the highest of any in the state. The diversions and shifts have made the program less effective. While we believe the account has stabilized, we are not opposed to considering a volumetric tax. We are very interested in the reporting and transparency provisions in the original bill.

Revenues from the HST are subject to the federal preemption and we are seeking clarity in the legislation that this tax does not apply to commercial airlines. Neither the HST nor the petroleum products tax are grandfathered in the federal preemption. As such, the revenue from these taxes must be spent on the airport use requirements. Alaska Airlines is engaged in a highly competitive business. Sudden increases in our operations impair Alaska's ability to invest in people and diminish competitive position with respect to other carriers. Our average cost per passenger has increased by $25 from two years ago, while the average revenue has decreased by $2. If the preemption is not properly applied, it will result in a $12 million tax increase for Alaska.

Increasing the tax on gasoline to $0.06 per gallon in the difficult economic times for agriculture is a bad idea and increasing it over time compounds the difficulty. Agriculture has been left behind in the economic prosperity for the region. If the Legislature had not diverted MTCA to other unrelated activities, we would not see the shortfall we do today.

Persons Testifying: PRO: Senator David Frockt, Prime Sponsor; Gerry O'Keefe, Ports Association; Carl Schroeder, Association of Washington Cities; Paul Jewell, Washington Association of Counties; Sean Eagan, Seaport Alliance and Port of Tacoma; Eric ffitch, Port of Seattle; Len McComb, Port of Everett; Nick Federici, Washington Toxics Coalition; James Rasmussen, Duwamish River Cleanup Coalition; Darcy Nonemacher, Washington Environmental Council; Scott Richards, The Nature Conservancy; Denise Clifford, Department of Ecology, Government Relations Director; Joe Laxson, Department of Health, Policy Director; Laura Butler, Department of Agriculture, Legislative Policy Director; Jeff Parsons, Puget Sound Partnership, Legislative Policy Director; Susan Saffery, City of Seattle.

CON: Scott Kennedy, Alaska Airlines; Dan Coyne, NW Ag Co-op Council, Food Northwest, Northwest Dairy Association; Greg Hanon, WSPA; Peter Godlewski, Association of Washington Business; Tom McBride, Far West Agribusiness Association.

Persons Signed In To Testify But Not Testifying: No one.