

# SENATE BILL REPORT

## SB 5857

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As of January 25, 2022

**Title:** An act relating to dedicating funding from the model toxics control accounts for pollution cleanup, water flow management, water supply, and aquatic resource protection.

**Brief Description:** Concerning dedicating funding from the model toxics control accounts for pollution cleanup, water flow management, water supply, and aquatic resource protection.

**Sponsors:** Senators Braun, Muzzall, Schoesler, Sefzik and Short.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/25/22.

**Brief Summary of Bill**

- Removes the 60 percent distribution of hazardous substance tax (HST) revenues to the Model Toxics Control (MTCA) Operating Account.
- Increases HST revenue distributions to the MTCA Capital and Stormwater accounts to 50 percent each.
- Renames the MTCA Stormwater Account as the MTCA Stormwater and Water Infrastructure Account and adds eligible uses to include drought mitigation and water flow management.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Gregory Vogel (786-7413)

**Background:** Model Toxics Control Act. The Model Toxics Control Act (MTCA), which is administered and enforced by the Department of Ecology (Ecology), requires liable parties to clean up sites contaminated with hazardous substances, and authorizes Ecology to conduct pollution prevention activities.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Hazardous Substance Tax. The Hazardous Substance Tax (HST) applies to more than 8000 hazardous substances, including petroleum products and certain chemicals and pesticides. The person or business that takes first possession of a hazardous substance within Washington is responsible for paying the tax.

In 2019, the Legislature changed the HST from a value-based tax on petroleum products to a volumetric tax. Previous MTCA accounts were repealed and replaced with the MTCA Operating Account, the MTCA Capital Account, and the MTCA Stormwater Account.

The volumetric rate for petroleum products was established at \$1.09 per 42-gallon barrel, but may be adjusted annually according to the implicit price deflator for nonresidential construction. As of July 1, 2021, the tax rate is \$1.14 per barrel. The tax rate for other taxable hazardous substances is 0.7 percent of the wholesale value.

The first \$50 million per biennium of HST revenue from petroleum products is deposited into the state Motor Vehicle Fund, until the enactment of an additive transportation funding act. This revenue must be used exclusively for transportation stormwater purposes. The remaining HST revenue from petroleum products is deposited into the three MTCA accounts:

- 60 percent into the MTCA Operating Account;
- 25 percent into the MTCA Capital Account; and
- 15 percent into the MTCA Stormwater Account.

HST revenue from all other hazardous substances, including non-liquid petroleum products and certain pesticides and chemicals, is deposited into the MTCA Capital Account.

More than 95 percent of revenue deposited in the MTCA accounts comes from HST revenue. The remaining 5 percent comes from fees, cost recovery, fines, and other sources.

The MTCA Operating Account must be used for various environmental programs, including toxic cleanup, water quality, and air quality. The MTCA Capital Account must be used for the improvement, rehabilitation, remediation, and cleanup of toxic sites. The MTCA Stormwater Account must be used for operating and capital programs, activities, and projects relating to stormwater pollution control.

**Summary of Bill:** The 60 percent distribution to the MTCA Operating Account from HST revenues collected on petroleum products is removed. The distributions of HST revenues collected on petroleum products to the MTCA Capital Account and the renamed MTCA Stormwater and Water Infrastructure Account are both increased to 50 percent. The HST volumetric rate on petroleum products is no longer required to be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures.

The MTCA Stormwater Account is renamed the MTCA Stormwater and Water Infrastructure Account. Moneys in the account must be used for operating and capital

programs, activities, and projects relating to stormwater pollution control, drought mitigation, and water flow management. Moneys in the account must be used only to carry out the operating and capital programs, activities, and projects relating to:

- the MTCA Operating Account;
- the MTCA Capital Account;
- drought emergencies;
- grants to reduce hardship caused by water unavailability stemming from drought conditions;
- long-term flood damage reduction and aquatic species restoration in the Chehalis River Basin;
- providing access to new water supplies within the Columbia River Basin for both instream and out-of-stream uses;
- water conservation projects; and
- the Yakima River Basin Integrated Water Resource Management Plan.

These programs, activities, and projects may include, but are not limited to:

- stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;
- stormwater financial assistance to local governments that assist in compliance with MTCA;
- drought mitigation, planning, and prevention; and
- water infrastructure and supply as provided by the Office of Columbia River, the Yakima Basin Integrated Plan, and the Office of Chehalis Basin.

An intent statement is added to state that the purpose of MTCA is also to help achieve environmental protection through stormwater management, water flow management, and increased resiliency for aquatic resources.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2022.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is an important bill and follows the work done in 2019. It pulls the uses of operating account expenses and suggests that these programs should be supported through the general fund, and to instead, use the Model Toxics Control Act (MTCA) distributions for what it was originally intended for. The upside is we get twice as much money in capital investments, and significantly more funding for clean up activities and water infrastructure projects needed around the state. The escalator would not have been necessary if the shifts had not occurred in the first place. Washington refiners pay much more in taxes than comparable California refineries.

CON: We appreciate and support the sponsor's intent to increase funding for water availability and flood control, but this bill expands the voter approved intent of MTCA. The potential impact is very large. It is the largest funding source of Ecology's operating budget, providing \$280 million in operating funds and supporting 800 FTEs, and also, pass through grants for local governments. The inflationary increase maintains investment capacity in the fund, particularly as policy shifts to non-petroleum energy sources.

County governments have primary responsibility for managing solid waste in Washington. Funding for these programs are provided by grants from the hazardous substance tax, but there is a long history of this funding being cut and not replaced. This funding goes toward household waste management, recycling services, and organic waste diversion. Finally, last year, most of the funding was restored but it is still below 2013 levels. Eliminating MTCA operating funds leaves local solid waste behind and puts increasing demand on services.

The Washington Environmental Council worked to pass MTCA and continue to advocate for the law to meet its intended purposes. The water infrastructure funding would remove available funding for toxics and solid waste. Water infrastructure is important but should not be pitted against these other important purposes. Ports use and continue to use remedial action grants to turn contaminated sites into productive property. Without the operating funds, ports fear this would destabilize programs that ports care about. MTCA is about both cleanup and prevention and the principle that the polluter pays, and making these changes could upset the current balance that supports these goals.

**Persons Testifying:** PRO: Senator John Braun, Prime Sponsor; Greg Hanon, WSPA.

CON: Erik Fairchild, Department of Ecology; Paul Jewell, Washington State Association of Counties; Deb Geiger, Washington State Association of County Solid Waste Managers; Travis Dutton, Washington State Association of County Solid Waste Managers; Brenda Blanchfield, Washington State Association of County Solid Waste Managers; Mindy Roberts, Washington Environmental Council / Washington Conservation Voters; Sean Eagan, Port of Tacoma; Victoria Lincoln, WA Public Ports Association; Don Gourlie, Puget Sound Partnership.

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