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**SECOND SUBSTITUTE HOUSE BILL 3181**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House Finance (originally sponsored by Representatives Ormsby, Hunter, Clibborn, Dunshee, Upthegrove, Rolfes, Wood, Williams, Springer, Dickerson, Lias, Sells, Roberts, Kagi, Cody, Green, Eddy, Nelson, White, Hunt, Orwall, Hudgins, Pettigrew, Darneille, Appleton, Chase, Pedersen, Kenney, Maxwell, Flannigan, Kirby, Carlyle, Goodman, McCoy, and Simpson)

READ FIRST TIME 03/01/10.

1 AN ACT Relating to the clean water act of 2010 funding cleanup of  
2 water pollution and other programs necessary for the health and well-  
3 being of Washington citizens through an increase in the tax on  
4 hazardous substances; amending RCW 82.21.030 and 82.21.040; adding a  
5 new section to chapter 90.48 RCW; adding a new section to chapter 46.68  
6 RCW; adding a new section to chapter 90.71 RCW; creating new sections;  
7 providing an effective date; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** This act may be known and cited as the clean  
10 water act of 2010.

11 NEW SECTION. **Sec. 2.** (1) The legislature finds that nonpoint  
12 water pollution and contaminated storm water runoff is a major problem  
13 in the state creating a significant burden on the rivers, aquifers,  
14 lakes, streams, and marine receiving waters across Washington.

15 (2) The legislature recognizes that the burden of nonpoint and  
16 storm water pollution is caused by both increased volumes of water  
17 runoff due to the expansion of impervious surfaces and the toxic  
18 substances that pollute the runoff. The burden of storm water and

1 nonpoint pollution from hazardous substances is difficult to offset  
2 because the source of pollution is not a single physical point, but  
3 occurs wherever the toxic substances are manufactured, used, or  
4 consumed.

5 (3) The legislature finds that the federal government and the state  
6 of Washington have identified control of pollutants in storm water  
7 runoff through national pollutant discharge elimination system phase I  
8 and II municipal storm water permits as a requirement for the state and  
9 local jurisdictions. Impacts from the polluted storm water may be  
10 prevented or controlled through retrofit projects for existing  
11 infrastructure as well as other means.

12 (4) The legislature finds that resources available to offset the  
13 direct burdens of storm water pollution by hazardous substances are  
14 insufficient to meet existing needs. Existing funding is raised  
15 largely by local governments and is disproportionately borne by fees  
16 levied on individuals and property owners.

17 (5) Finally, the legislature finds that increasing the tax on  
18 hazardous substances is necessary to fund programs that will offset the  
19 burdens that pollution places on the environment and the waters of the  
20 state.

21 **Sec. 3.** RCW 82.21.030 and 1989 c 2 s 10 are each amended to read  
22 as follows:

23 (1)(a) A tax is imposed on the privilege of possession of hazardous  
24 substances in this state. The rate of the tax (~~((shall be))~~) is seven-  
25 tenths of one percent multiplied by the wholesale value of the  
26 substance.

27 (b) Beginning May 1, 2010, an additional tax is imposed on the  
28 privilege of possession of hazardous substances in this state. The  
29 rate of the tax is equal to one-tenth of one percent multiplied by the  
30 wholesale value of the substance. Beginning July 1, 2011, and each  
31 July 1st thereafter, the rate of tax under this subsection (1)(b) shall  
32 be increased by one-tenth of one percent until the rate of tax under  
33 this subsection (1)(b) is equal to four-tenths of one percent.

34 (2)(a) Moneys collected under (~~((this chapter shall))~~) subsection  
35 (1)(a) of this section must be deposited in the toxics control accounts  
36 under RCW 70.105D.070 and expended in accordance with the purposes  
37 stated therein.

1       (b) Moneys collected under subsection (1)(b) of this section shall  
2 be deposited as follows: (i) Eighty-four percent must be deposited in  
3 the storm water account created in section 4 of this act; (ii) four  
4 percent must be deposited into the Puget Sound recovery account to be  
5 used as required under section 6 of this act; (iii) two percent must be  
6 deposited in the state oil spill prevention account; and (iv) ten  
7 percent must be deposited into the motor vehicle account to be used as  
8 required under section 5 of this act.

9       (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.  
10 The tax due dates, reporting periods, and return requirements  
11 applicable to chapter 82.04 RCW apply equally to the tax imposed in  
12 this chapter.

13       NEW SECTION. Sec. 4. A new section is added to chapter 90.48 RCW  
14 to read as follows:

15       (1) The storm water account is created in the state treasury.  
16 Receipts from the tax imposed under RCW 82.21.030(1)(b) must be  
17 deposited in the account as set forth in RCW 82.21.030. Moneys in the  
18 account are allocated to the department of ecology and may be spent  
19 only after appropriation. Expenditures from the account must be used  
20 on activities or projects that mitigate or prevent storm water  
21 pollution as provided in this section.

22       (2)(a) After deducting the department's administrative costs of no  
23 more than four percent of the appropriations included in the omnibus  
24 operating and capital appropriations acts associated with administering  
25 a competitive grant process, moneys must be distributed annually as  
26 provided in (b) of this subsection:

27       (b)(i) By January 1, 2011, and by January 1st of each year  
28 thereafter, seventy-five thousand dollars must be provided to each  
29 jurisdiction that is subject to the national pollutant discharge  
30 elimination system phase I or phase II requirements.

31       (ii) The remaining moneys must be allocated through a grant process  
32 to local governments covered by national pollutant discharge  
33 elimination system municipal phase I or phase II permits to fund local  
34 government projects or activities that mitigate or prevent  
35 contamination of storm water or the recontamination of receiving waters  
36 previously remediated under federal or state-approved activities. To  
37 be eligible, local governments must provide fifty percent of project or

1 activity costs from other nonstate fund sources. The department must  
2 allocate eighty percent of the moneys distributed under this subsection  
3 (2)(b)(ii) to cities with the remainder going to counties.

4 (3) The department must initiate the grant application process by  
5 July 1, 2010.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.68 RCW  
7 to read as follows:

8 (1) The department of transportation must use taxes deposited in  
9 the motor vehicle account under RCW 82.21.030(2)(b) to fund activities  
10 or projects that address contamination of storm water related to  
11 transportation infrastructure through the implementation of the  
12 department of transportation's national pollutant discharge elimination  
13 system programs permitted under chapter 90.48 RCW. Activities and  
14 projects that may be supported with these funds include, but are not  
15 limited to: Construction, operation, inspection, monitoring, and  
16 maintenance of storm water facilities; purchase, operation, and  
17 maintenance of vector trucks and vector decant facilities; purchase,  
18 maintenance, and operation of storm water management inventory,  
19 mapping, and information systems; storm water pollution prevention plan  
20 development and implementation; and storm water training. For the  
21 purposes of this section, "storm water facilities" includes, but is not  
22 limited to, ponds, biofiltration swales, storm water treatment tanks,  
23 detention vaults, oil water separators, dry wells, catch basins, and  
24 filters.

25 (2) The taxes deposited in the motor vehicle account under RCW  
26 82.21.030(2)(b) may not be used for construction of storm water  
27 facilities associated with new road construction. For purposes of this  
28 section, "new roads" includes roads that are new alignments. Roads  
29 that add to or replace an existing roadway are not "new roads."

30 (3) Beginning January 1, 2011, the department of transportation  
31 must deliver a biennial report describing the use of the funds to the  
32 governor and the appropriate legislative committees.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.71 RCW  
34 to read as follows:

35 Consistent with RCW 90.71.340, the Puget Sound partnership must use

1 taxes deposited in the Puget Sound recovery account as provided under  
2 RCW 82.21.030(2)(b) to fund activities or capital projects that are  
3 consistent with the prioritization of the 2020 action agenda.

4 **Sec. 7.** RCW 82.21.040 and 1989 c 2 s 11 are each amended to read  
5 as follows:

6 The following are exempt from the tax imposed in this chapter:

7 (1) Any successive possession of a previously taxed hazardous  
8 substance. If tax due under this chapter has not been paid with  
9 respect to a hazardous substance, the department may collect the tax  
10 from any person who has had possession of the hazardous substance. If  
11 the tax is paid by any person other than the first person having  
12 taxable possession of a hazardous substance, the amount of tax paid  
13 shall constitute a debt owed by the first person having taxable  
14 possession to the person who paid the tax.

15 (2) Any possession of a hazardous substance by a natural person  
16 under circumstances where the substance is used, or is to be used, for  
17 a personal or domestic purpose (and not for any business purpose) by  
18 that person or a relative of, or person residing in the same dwelling  
19 as, that person.

20 (3) Any possession of a hazardous substance amount which is  
21 determined as minimal by the department of ecology and which is  
22 possessed by a retailer for the purpose of making sales to ultimate  
23 consumers. This exemption does not apply to pesticide or petroleum  
24 products.

25 (4) Any possession of alumina or natural gas.

26 (5) Persons or activities which the state is prohibited from taxing  
27 under the United States Constitution.

28 (6) Any persons possessing a hazardous substance where such  
29 possession first occurred before March 1, 1989.

30 (7) With respect to the tax imposed under RCW 82.21.030(1)(b), any  
31 possession of petroleum products that are exported for use or sale  
32 outside this state as fuel.

33 NEW SECTION. **Sec. 8.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 9.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    May 1, 2010.

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