

SENATE BILL REPORT

SB 5296

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 13, 2013
Ways & Means, April 11, 2013

Title: An act relating to the model toxics control act.

Brief Description: Concerning the model toxics control act.

Sponsors: Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/23/13, 2/13/13 [DPS-WM, DNP].

Ways & Means: 2/20/13, 4/11/13 [DP2S, DNP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5296 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Brown, Chase and Honeyford.

Minority Report: Do not pass.

Signed by Senators Ranker, Ranking Member; Billig.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5296 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Bailey, Becker, Braun, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Conway, Fraser, Hasegawa, Keiser, Kohl-Welles and Ranker.

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.

Staff: Sherry McNamara (786-7402)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up. MTCA is funded by a 0.70 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. The state toxic control account (SCTA) receives 47 percent of the revenue obtained from the hazardous substance tax (HST) while the local toxic control account (LTCA) receives 53 percent.

DOE is responsible to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. DOE must prioritize funding to clean up hazardous waste sites and prevent future hazardous waste sites. Hazardous waste sites are ranked by considering the amount and type of contamination, the risk that contamination will spread, and routes of exposure. Sites are considered a higher priority when the contamination threatens drinking water supplies, exists in high quantity or over a large area, is toxic to animals or fish, may affect a body of water, or affects public health.

Liable parties must clean up sites contaminated with hazardous materials. DOE uses several methods to assist potentially liable persons to clean up hazardous waste sites such as the voluntary clean-up program, consent decrees, and agreed orders.

SCTA and LTCA provide funding for activities such as state programs for hazardous and solid waste planning, management, and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. DOE must use LTCA funds for grants and loans to local governments with a prioritized order beginning with remedial actions, hazardous waste plans and programs, solid waste plans and programs, cleanup of methamphetamine production sites, and cleanup and disposal of hazardous substances from abandoned or derelict vessels.

DOE must prepare a ten-year financing report every two years. The report must identify long-term remedial action project costs, track expenses, and project future needs. Additionally, DOE must project the remedial action need, cost, revenue, and recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both SCTA and LTCA.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Second Substitute): State and Local Toxics Control Accounts. Revises the percentage of HST revenues to be deposited into STCA to 60 percent and into LTCA to 40 percent.

Prioritizes the uses of state and local toxic control account funds to:

- sites that are prepared to begin clean-up action;
- brownfield properties; and
- public funding to assist potentially liable persons who entered into a settlement agreement with the state and are prepared to begin clean-up action.

Adds new uses of the funds as such:

- state agriculture and health programs for pesticide disposal, recycling, and reduction;
- stormwater pollution control projects and activities; and
- air quality programs.

Creates the Environmental Legacy Stewardship Account (ELSA). Once \$108 million of the HST is distributed to STCA and LTCA, the remainder collected must be deposited into ELSA. The bill makes a one-time transfer of \$45 million from STCA and \$35 million from LTCA to ELSA.

ELSA funds may be used only for:

- performance and outcome-based projects that support cleanup, monitoring, and prevention of releases of hazardous substances; water protection and monitoring; and water pollution prevention and monitoring;
- clean-up projects using model remedies;
- stormwater projects;
- cleanup of derelict vessels;
- remedial action grants; and
- public participation grants. The grants must be specifically authorized by the Legislature.

Model Remedies. Requires DOE to:

- establish model remedies for common categories of facilities, hazardous substances, media, or geographic regions to streamline and accelerate the clean-up process;
- accept the use of a model remedy at facilities meeting the requirements for such cleanup – neither an analysis of alternatives nor a feasibility study are required; and
- submit a report on the status and use of model remedies, including the number and types of model remedy proposals submitted by qualified, private-sector engineers, contractors, or consultants.

Ten-year Financing Plan and Report. Requires DOE to:

- plan to clean up and prevent hazardous waste sites at a pace that matches the estimated cash resources in STCA, LTCA, and ELSA;
- analyze estimated cash resources and consider the annual cash-flow requirements of major projects that receive appropriations expected to cross multiple biennia; and
- include in the report separate budget estimates for large, multi-biennial, clean-up projects that exceed \$10 million.

Radioactive Mixed Waste Account. The bill:

- transfers the STCA funds used for radioactive mixed waste to the new account; and
- creates the account for use by DOE to regulate facilities that treat, store, or dispose of mixed waste or mixed radioactive waste.

Reports. Every second odd-numbered year, DOE must report on progress made in cleaning up hazardous waste sites to the Legislature and the public.

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

- Revises the percentage of the HST revenues to be deposited into STCA to 60 percent and into LTCA to 40 percent.
- Changes the category E account name to ELSA.
- Changes the level from \$140 million to \$108 million of the HST revenues distributed to STCA and LTCA, the remainder collected must be deposited into ELSA.
- Makes a one-time transfer of \$45 million from STCA and \$35 million from LTCA to ELSA, instead of \$100 million.
- Restored mixed-funding language. This allows DOE to use grants and loans to assist potentially liable persons with remedial actions. Gives priority to those who are ready to begin cleanup.
- Restores public participation grants. Provides that 1 percent of MTCA funds must be deposited into ELSA and up to 1 percent may be allocated for public participation grants. Each grant must be specifically authorized by the Legislature.
- Restores language for public funding to potentially liable persons who entered into a settlement agreement with the state.
- Revises the model remedy language so that DOE is able to follow the public notice requirements at sites where it conducts or supervises the remedial actions.
- Under the uses of ELSA, revises transportation stormwater projects to stormwater projects; adds remedial actions grants.
- Adds funding information as an element of the ten-year financing report.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended First Substitute): Revises uses of state and local toxics control account funds. Clarifies the funding of the special category E account and specifies the uses of these funds. Creates a new radioactive mixed waste account and transfers to this account the mixed waste funds from STCA.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2013

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications): PRO: We need to make sure MTCA funding goes to cleanup, jobs, and economic development. There needs to be accountability and transparency in the budgeting process. There needs to be review of the effectiveness and efficiency of the programs to maximize the use of the funds. The bill would allow for more dollars to be spent more rapidly. Encouraging the use of model remedies is a great idea. The main purpose of these funds is to prevent and clean up hazardous waste sites. We need to stop diverting money away from the main purpose of MTCA. Money spent on other programs is money not being spent on the clean-up process.

CON: We need to remember the concept that successful cleanup is reliant on reducing toxic substances in the environment, making sure that toxic substances are properly handled, and protection of sites that are cleaned up. MTCA provides for the continued reduction of toxic

substances in the environment which is necessary to maintain cleanup of sites. STCA is used in many state programs that deal with hazardous management planning and inspections. The bill would negatively impact the core prevention programs and waste-management activities such as inspections of hazardous management planning waste sites, solid waste planning and inspections of sites, waste generation, oil spill prevention and stormwater source control, and grants to local governments. This would negatively affect core public health functions necessary to protect public health from the effects of toxic substances in the environment. Removing LTCA would directly interfere with ongoing site cleanups. The bill could result in unintended elimination of some jobs.

OTHER: We like the unquestionable support to cleanup. It is unclear as to the impacts to currently ongoing projects. There needs to be a conversation on how the dollars are spent.

Persons Testifying (Energy, Environment & Telecommunications): PRO: Greg Hanon, Western States Petroleum Assn.; Brandon Houskeeper, Assn. of WA Business.

CON: Jim Pendowski, DOE; Maryanne Guichard, Dept. of Health; Art Starry, Thurston County Public Health, WA State Environmental Health Directors; Rod Brown, WA Environmental Council; Kerry Graber, WA Federation of State Employees.

OTHER: Johan Hellman, WA Public Ports Assn.; Carl Schroeder, Assn. of WA Cities.

Staff Summary of Public Testimony as Heard in Committee (Ways & Means): PRO: This bill works to reprioritize MTCA to get people to work and clean up hazardous sites. This bill will put more money into projects and expedite the cleanup of the most contaminated toxic sites in the state. Stormwater is a priority and this bill covers the investment in stormwater. Cleaning up sites will increase property values. It is important to focus the funds on the priority projects and not transfer the funds to the general fund and other areas.

CON: This bill takes the will of the people and circumvents it. The bill needs to have a clear statement of what is in and out for projects. The public participation grants are eliminated, which decreases citizen participation and involvement. The Coordinated Prevention Grants for solid waste are shifted into the new category E funding. Key prevention programs are jeopardized. The bill is confusing and puts programs at risk.

OTHER: The new account will provide more certainty for long-term funding. A study by the Joint Legislative Audit and Review Committee should be conducted to see what was achieved under MTCA. The prioritization of funds should be done through the budgeting process.

Persons Testifying (Ways & Means): PRO: Senator Ericksen, prime sponsor; Brandon Houskeeper, Assn. of WA Business; Greg Hannon, Western States Petroleum Assn.; Johan Hellman, WA Public Ports Assn.; Jerry Smedes, NW Environmental Business Council.

CON: Dolores Mitchell, WA Federation of State Employees; Erik Fairchild, DOE; Bruce Wishart, Sierra Club, Puget Soundkeeper; Darcy Nonemacher, WA Environmental Council; Suellen Mele, Zero Waste WA.

OTHER: Laura Merrill, WA State Assn. of Counties; Art Starry, Thurston County Public Health; John Sherman, Tacoma-Pierce County Health Dept.; Jim Cahill, Office of Financial Management; Carl Schroeder, Assn. of WA Cities.