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SENATE BILL 6570

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State of Washington

64th Legislature

2016 Regular Session

By Senator Ericksen

Read first time 01/26/16. Referred to Committee on Energy,  
Environment & Telecommunications.

1 AN ACT Relating to prioritizing the expenditure of funds  
2 associated with the model toxics control act for the cleanup of toxic  
3 pollution; amending 2015 3rd sp.s. c 4 s 302 and 2015 3rd sp.s. c 3 s  
4 3062 (uncodified); reenacting and amending RCW 70.105D.070; creating  
5 a new section; repealing 2015 3rd sp.s. c 3 ss 3055 and 3056  
6 (uncodified); and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature recognizes that the  
9 declining global price of oil has resulted in a loss of revenues  
10 collected from the hazardous substance tax in Washington. It is the  
11 intent of the legislature to manage the decline in revenue to the  
12 state toxics control account, the local toxics control account, and  
13 the environmental legacy stewardship account by setting a policy that  
14 prioritizes cleanup of toxic sites, as they are a key driver of  
15 economic activity and community revitalization. The legislature finds  
16 that to achieve this policy, it is necessary to postpone the award of  
17 other projects, including grants and loans for controlling storm  
18 water pollution and grants for public participation grants. It is the  
19 further intent of the legislature that the award of grants and loans  
20 to lesser priority programs shall resume upon the restoration of

1 revenue to the state toxics control account, the local toxics control  
2 account, and the environmental legacy stewardship account.

3 **Sec. 2.** 2015 3rd sp.s. c 4 s 302 (uncodified) is amended to read  
4 as follows:

5 **FOR THE DEPARTMENT OF ECOLOGY**

6	General Fund—State Appropriation (FY 2016)	. . . . .	(( <del>\$24,694,000</del> ))
7			<u>\$24,693,000</u>
8	General Fund—State Appropriation (FY 2017)	. . . . .	(( <del>\$24,795,000</del> ))
9			<u>\$24,771,000</u>
10	General Fund—Federal Appropriation	. . . . .	\$103,800,000
11	General Fund—Private/Local Appropriation	. . . . .	\$22,398,000
12	Reclamation Account—State Appropriation	. . . . .	\$3,926,000
13	Flood Control Assistance Account—State Appropriation	. . .	\$2,068,000
14	State Emergency Water Projects Revolving Account—State		
15	Appropriation	. . . . .	\$40,000
16	Waste Reduction/Recycling/Litter Control—State		
17	Appropriation	. . . . .	(( <del>\$13,163,000</del> ))
18			<u>\$13,173,000</u>
19	State Drought Preparedness Account—State Appropriation	. . .	\$204,000
20	State and Local Improvements Revolving Account (Water		
21	Supply Facilities)—State Appropriation	. . . . .	\$447,000
22	Aquatic Algae Control Account—State Appropriation	. . . . .	\$518,000
23	Water Rights Tracking System Account—State Appropriation	. .	\$46,000
24	Site Closure Account—State Appropriation	. . . . .	\$578,000
25	Wood Stove Education and Enforcement Account—State		
26	Appropriation	. . . . .	\$547,000
27	Worker and Community Right-to-Know Account—State		
28	Appropriation	. . . . .	\$1,790,000
29	Water Rights Processing Account—State Appropriation	. . . . .	\$39,000
30	State Toxics Control Account—State Appropriation	. .	(( <del>\$132,643,000</del> ))
31			<u>\$113,729,000</u>
32	State Toxics Control Account—Private/Local		
33	Appropriation	. . . . .	\$499,000
34	Local Toxics Control Account—State Appropriation	. . .	(( <del>\$4,628,000</del> ))
35			<u>\$3,428,000</u>
36	Water Quality Permit Account—State Appropriation	. .	(( <del>\$41,644,000</del> ))
37			<u>\$44,101,000</u>
38	Underground Storage Tank Account—State Appropriation	. . .	\$3,544,000

1	Biosolids Permit Account—State Appropriation . . . . .	\$2,108,000
2	Environmental Legacy Stewardship Account—State	
3	Appropriation . . . . .	<del>(\$44,295,000)</del>
4		<u>\$36,432,000</u>
5	Hazardous Waste Assistance Account—State	
6	Appropriation . . . . .	<del>(\$6,029,000)</del>
7		<u>\$6,040,000</u>
8	Radioactive Mixed Waste Account—State Appropriation . . . . .	<del>(\$14,900,000)</del>
9		<u>\$15,753,000</u>
10	Air Pollution Control Account—State Appropriation . . . . .	<del>(\$3,284,000)</del>
11		<u>\$3,984,000</u>
12	Oil Spill Prevention Account—State Appropriation . . . . .	<del>(\$8,594,000)</del>
13		<u>\$8,605,000</u>
14	Air Operating Permit Account—State Appropriation . . . . .	\$3,231,000
15	Freshwater Aquatic Weeds Account—State Appropriation . . . . .	\$1,439,000
16	Oil Spill Response Account—State Appropriation . . . . .	\$7,076,000
17	Water Pollution Control Revolving Administration	
18	Account—State Appropriation . . . . .	\$579,000
19	Water Pollution Control Revolving Account—State	
20	Appropriation . . . . .	\$493,000
21	Water Pollution Control Revolving Account—Federal	
22	Appropriation . . . . .	\$2,337,000
23	TOTAL APPROPRIATION. . . . .	<del>(\$476,376,000)</del>
24		<u>\$452,416,000</u>

25       The appropriations in this section are subject to the following  
26 conditions and limitations:

27       (1) \$170,000 of the oil spill prevention account—state  
28 appropriation is provided solely for a contract with the University  
29 of Washington's sea grant program to continue an educational program  
30 targeted to small spills from commercial fishing vessels, ferries,  
31 cruise ships, ports, and marinas.

32       (2) \$495,000 of the state toxics control account—state  
33 appropriation and \$625,000 of the local toxics control account—state  
34 appropriation is provided solely for the expansion of the local  
35 source control program by adding additional capacity in the Columbia  
36 River basin and Clark county.

37       (3) \$310,000 of the state toxics control account—state  
38 appropriation is provided solely for the Spokane river regional

1 toxics task force to address elevated levels of polychlorinated  
2 biphenyls in the Spokane river.

3 (4) Within the amounts appropriated in this section, the  
4 department shall conduct a stakeholder process with the department of  
5 fish and wildlife to develop recommendations to restructure the fees  
6 under RCW 90.16.050 and report to the appropriate committees of the  
7 legislature by December 1, 2015.

8 (5) \$1,044,000 of the oil spill prevention account—state  
9 appropriation is provided solely for the implementation of chapter  
10 274, Laws of 2015 (ESHB 1449).

11 (6) \$3,883,000 of the state toxics control account—state  
12 appropriation is provided solely for the implementation of Engrossed  
13 Second Substitute House Bill No. 1472 (chemical action plans), Second  
14 Substitute Senate Bill No. 5056 (safer chemicals/action plans),  
15 Substitute Senate Bill No. 6131 (safer chemicals), or any of these.  
16 If none of these bills are enacted by July 10, 2015, the amount  
17 provided in this subsection shall lapse.

18 (7) \$134,000 of the general fund—state appropriation for fiscal  
19 year 2016 is provided solely for implementation of chapter 144, Laws  
20 of 2015 (SHB 1851).

21 (8) \$135,000 of the general fund—state appropriation for fiscal  
22 year 2016 and \$135,000 of the general fund—state appropriation for  
23 fiscal year 2017 are provided solely for the Walla Walla watershed  
24 management partnership to address water resource and management  
25 issues in the Walla Walla watershed.

26 (9)(a) \$14,000,000 of the general fund—state appropriation for  
27 fiscal year 2016 and \$14,000,000 of the general fund—state  
28 appropriation for fiscal year 2017 are for activities within the  
29 water resources program.

30 (b) Of the amounts provided in (a) of this subsection, \$500,000  
31 of the general fund—state appropriation for fiscal year 2017 is  
32 provided solely for processing water right permit applications only  
33 if the department of ecology issues at least five hundred water right  
34 decisions in fiscal year 2016. If the department of ecology does not  
35 issue at least five hundred water right decisions in fiscal year  
36 2016, the amount provided in this subsection shall lapse and remain  
37 unexpended. Permit decisions for the Columbia river basin count  
38 toward the five hundred water rights decisions under this subsection.  
39 The department of ecology shall submit a report to the office of

1 financial management and the state treasurer by June 30, 2016, that  
2 documents whether five hundred water right decisions were issued in  
3 fiscal year 2016. For the purposes of this subsection, applications  
4 that are voluntarily withdrawn by an applicant do not count towards  
5 the five hundred water right decision requirement. For the purposes  
6 of water budget-neutral requests under chapter 173-539A WAC, multiple  
7 domestic connections authorized within a single water budget-neutral  
8 decision are considered one decision for the purposes of this  
9 subsection.

10 (10) Within the amounts appropriated in this section, the  
11 department must evaluate mitigation options for domestic water use in  
12 areas of the Yakima basin for which mitigation water is unavailable  
13 and access to water from water banks is unsuitable. The department  
14 must recommend solutions for providing mitigation water for domestic  
15 use in such areas. A report of the department's findings must be  
16 provided to the legislature by December 1, 2015.

17 **Sec. 3.** 2015 3rd sp.s. c 3 s 3062 (uncodified) is amended to  
18 read as follows:

19 **FOR THE DEPARTMENT OF ECOLOGY**

20 Storm Water Financial Assistance Program (30000535)

21 The appropriations in this section are subject to the following  
22 conditions and limitations:

23 (1) The appropriations are provided solely for the storm water  
24 financial assistance program.

25 (2) \$981,000 of the appropriation is provided solely for the  
26 Washington State University LID frontage - water quality project.

27 Appropriation:

28	<del>((Local Toxics Control Account—State. . . . . \$33,000,000))</del>
29	State Building Construction Account—State. . . . . \$20,000,000
30	Subtotal Appropriation. . . . . <del>(((\$53,000,000))</del>
31	<u>\$20,000,000</u>
32	Prior Biennia (Expenditures). . . . . \$0
33	Future Biennia (Projected Costs). . . . . \$280,000,000
34	TOTAL. . . . . <del>(((\$333,000,000))</del>
35	<u>\$300,000,000</u>

1       **Sec. 4.** RCW 70.105D.070 and 2015 3rd sp.s. c 4 s 969 and 2015  
2 3rd sp.s. c 3 s 7035 are each reenacted and amended to read as  
3 follows:

4       (1) The state toxics control account and the local toxics control  
5 account are hereby created in the state treasury.

6       (2)(a) Moneys collected under RCW 82.21.030 must be deposited as  
7 follows: Fifty-six percent to the state toxics control account under  
8 subsection (3) of this section and forty-four percent to the local  
9 toxics control account under subsection (4) of this section. When the  
10 cumulative amount of deposits made to the state and local toxics  
11 control accounts under this section reaches the limit during a fiscal  
12 year as established in (b) of this subsection, the remainder of the  
13 moneys collected under RCW 82.21.030 during that fiscal year must be  
14 deposited into the environmental legacy stewardship account created  
15 in RCW 70.105D.170.

16       (b) The limit on distributions of moneys collected under RCW  
17 82.21.030 to the state and local toxics control accounts for the  
18 fiscal year beginning July 1, 2013, is one hundred forty million  
19 dollars.

20       (c) In addition to the funds required under (a) of this  
21 subsection, the following moneys must be deposited into the state  
22 toxics control account: (i) The costs of remedial actions recovered  
23 under this chapter or chapter 70.105A RCW; (ii) penalties collected  
24 or recovered under this chapter; and (iii) any other money  
25 appropriated or transferred to the account by the legislature.

26       (3) Moneys in the state toxics control account must be used only  
27 to carry out the purposes of this chapter, including but not limited  
28 to the following activities:

29       (a) The state's responsibility for hazardous waste planning,  
30 management, regulation, enforcement, technical assistance, and public  
31 education required under chapter 70.105 RCW;

32       (b) The state's responsibility for solid waste planning,  
33 management, regulation, enforcement, technical assistance, and public  
34 education required under chapter 70.95 RCW;

35       (c) The hazardous waste clean-up program required under this  
36 chapter;

37       (d) State matching funds required under federal cleanup law;

38       (e) Financial assistance for local programs in accordance with  
39 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

- 1 (f) State government programs for the safe reduction, recycling,  
2 or disposal of paint and hazardous wastes from households, small  
3 businesses, and agriculture;
- 4 (g) Oil and hazardous materials spill prevention, preparedness,  
5 training, and response activities;
- 6 (h) Water and environmental health protection and monitoring  
7 programs;
- 8 (i) Programs authorized under chapter 70.146 RCW;
- 9 (j) A public participation program;
- 10 (k) Public funding to assist potentially liable persons to pay  
11 for the costs of remedial action in compliance with clean-up  
12 standards under RCW 70.105D.030(2)(e) but only when the amount and  
13 terms of such funding are established under a settlement agreement  
14 under RCW 70.105D.040(4) and when the director has found that the  
15 funding will achieve both: (i) A substantially more expeditious or  
16 enhanced cleanup than would otherwise occur; and (ii) the prevention  
17 or mitigation of unfair economic hardship;
- 18 (l) Development and demonstration of alternative management  
19 technologies designed to carry out the hazardous waste management  
20 priorities of RCW 70.105.150;
- 21 (m) State agriculture and health programs for the safe use,  
22 reduction, recycling, or disposal of pesticides;
- 23 (n) Storm water pollution control projects and activities that  
24 protect or preserve existing remedial actions or prevent hazardous  
25 clean-up sites;
- 26 (o) Funding requirements to maintain receipt of federal funds  
27 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et  
28 seq.);
- 29 (p) Air quality programs and actions for reducing public exposure  
30 to toxic air pollution;
- 31 (q) Public funding to assist prospective purchasers to pay for  
32 the costs of remedial action in compliance with clean-up standards  
33 under RCW 70.105D.030(2)(e) if:
- 34 (i) The facility is located within a redevelopment opportunity  
35 zone designated under RCW 70.105D.150;
- 36 (ii) The amount and terms of the funding are established under a  
37 settlement agreement under RCW 70.105D.040(5); and
- 38 (iii) The director has found the funding meets any additional  
39 criteria established in rule by the department, will achieve a  
40 substantially more expeditious or enhanced cleanup than would

1 otherwise occur, and will provide a public benefit in addition to  
2 cleanup commensurate with the scope of the public funding;

3 (r) Petroleum-based plastic or expanded polystyrene foam debris  
4 cleanup activities in fresh or marine waters;

5 (s) Appropriations to the local toxics control account or the  
6 environmental legacy stewardship account created in RCW 70.105D.170,  
7 if the legislature determines that priorities for spending exceed  
8 available funds in those accounts;

9 (t) During the 2013-2015 and 2015-2017 fiscal biennia, the  
10 department of ecology's water quality, shorelands, environmental  
11 assessment, administration, and air quality programs;

12 (u) During the 2013-2015 fiscal biennium, actions at the state  
13 conservation commission to improve water quality for shellfish;

14 (v) During the 2013-2015 and 2015-2017 fiscal biennia, actions at  
15 the University of Washington for reducing ocean acidification;

16 (w) During the 2015-2017 fiscal biennium, for the University of  
17 Washington Tacoma soil remediation project;

18 (x) For the 2013-2015 fiscal biennium, moneys in the state toxics  
19 control account may be spent on projects in section 3160, chapter 19,  
20 Laws of 2013 2nd sp. sess. and for transfer to the local toxics  
21 control account;

22 (y) For the 2013-2015 fiscal biennium, moneys in the state toxics  
23 control account may be transferred to the radioactive mixed waste  
24 account; and

25 (z) For the 2015-2017 fiscal biennium, forest practices  
26 regulation at the department of natural resources.

27 (4)(a) The department shall use moneys deposited in the local  
28 toxics control account for grants or loans to local governments for  
29 the following purposes in descending order of priority:

30 (i) Extended grant agreements entered into under (e)(i) of this  
31 subsection;

32 (ii) Remedial actions, including planning for adaptive reuse of  
33 properties as provided for under (e)(iv) of this subsection. The  
34 department must prioritize funding of remedial actions at:

35 (A) Facilities on the department's hazardous sites list with a  
36 high hazard ranking for which there is an approved remedial action  
37 work plan or an equivalent document under federal cleanup law;

38 (B) Brownfield properties within a redevelopment opportunity zone  
39 if the local government is a prospective purchaser of the property

1 and there is a department-approved remedial action work plan or  
2 equivalent document under the federal cleanup law;

3 (iii) Storm water pollution source projects that: (A) Work in  
4 conjunction with a remedial action; (B) protect completed remedial  
5 actions against recontamination; or (C) prevent hazardous clean-up  
6 sites;

7 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

8 (v) Solid waste plans and programs under chapters 70.95, 70.95C,  
9 70.95I, and 70.105 RCW;

10 (vi) Petroleum-based plastic or expanded polystyrene foam debris  
11 cleanup activities in fresh or marine waters; and

12 (vii) Appropriations to the state toxics control account or the  
13 environmental legacy stewardship account created in RCW 70.105D.170,  
14 if the legislature determines that priorities for spending exceed  
15 available funds in those accounts.

16 (b) Funds for plans and programs must be allocated consistent  
17 with the priorities and matching requirements established in chapters  
18 70.105, 70.95C, 70.95I, and 70.95 RCW.

19 (c) During the 2013-2015 fiscal biennium, the local toxics  
20 control account may also be used for local government storm water  
21 planning and implementation activities.

22 (d) During the 2013-2015 fiscal biennium, the legislature may  
23 transfer from the local toxics control account to the state general  
24 fund, such amounts as reflect the excess fund balance in the account.

25 (e) To expedite cleanups throughout the state, the department may  
26 use the following strategies when providing grants to local  
27 governments under this subsection:

28 (i) Enter into an extended grant agreement with a local  
29 government conducting remedial actions at a facility where those  
30 actions extend over multiple biennia and the total eligible cost of  
31 those actions exceeds twenty million dollars. The agreement is  
32 subject to the following limitations:

33 (A) The initial duration of such an agreement may not exceed ten  
34 years. The department may extend the duration of such an agreement  
35 upon finding substantial progress has been made on remedial actions  
36 at the facility;

37 (B) Extended grant agreements may not exceed fifty percent of the  
38 total eligible remedial action costs at the facility; and

39 (C) The department may not allocate future funding to an extended  
40 grant agreement unless the local government has demonstrated to the

1 department that funds awarded under the agreement during the previous  
2 biennium have been substantially expended or contracts have been  
3 entered into to substantially expend the funds;

4 (ii) Enter into a grant agreement with a local government  
5 conducting a remedial action that provides for periodic reimbursement  
6 of remedial action costs as they are incurred as established in the  
7 agreement;

8 (iii) Enter into a grant agreement with a local government prior  
9 to it acquiring a property or obtaining necessary access to conduct  
10 remedial actions, provided the agreement is conditioned upon the  
11 local government acquiring the property or obtaining the access in  
12 accordance with a schedule specified in the agreement;

13 (iv) Provide integrated planning grants to local governments to  
14 fund studies necessary to facilitate remedial actions at brownfield  
15 properties and adaptive reuse of properties following remediation.  
16 Eligible activities include, but are not limited to: Environmental  
17 site assessments; remedial investigations; health assessments;  
18 feasibility studies; site planning; community involvement; land use  
19 and regulatory analyses; building and infrastructure assessments;  
20 economic and fiscal analyses; and any environmental analyses under  
21 chapter 43.21C RCW;

22 (v) Provide grants to local governments for remedial actions  
23 related to area-wide groundwater contamination. To receive the  
24 funding, the local government does not need to be a potentially  
25 liable person or be required to seek reimbursement of grant funds  
26 from a potentially liable person;

27 (vi) The director may alter grant matching requirements to create  
28 incentives for local governments to expedite cleanups when one of the  
29 following conditions exists:

30 (A) Funding would prevent or mitigate unfair economic hardship  
31 imposed by the clean-up liability;

32 (B) Funding would create new substantial economic development,  
33 public recreational opportunities, or habitat restoration  
34 opportunities that would not otherwise occur; or

35 (C) Funding would create an opportunity for acquisition and  
36 redevelopment of brownfield property under RCW 70.105D.040(5) that  
37 would not otherwise occur;

38 (vii) When pending grant applications under (e)(iv) and (v) of  
39 this subsection (4) exceed the amount of funds available, designated

1 redevelopment opportunity zones must receive priority for  
2 distribution of available funds.

3 (f) To expedite multiparty clean-up efforts, the department may  
4 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal  
5 biennium, moneys in the local toxics control account may be spent on  
6 projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of  
7 2013 2nd sp. sess.

8 (5) Except for unanticipated receipts under RCW 43.79.260 through  
9 43.79.282, moneys in the state and local toxics control accounts may  
10 be spent only after appropriation by statute.

11 (6) No moneys deposited into either the state or local toxics  
12 control account may be used for: Natural disasters where there is no  
13 hazardous substance contamination; high performance buildings; solid  
14 waste incinerator facility feasibility studies, construction,  
15 maintenance, or operation; or after January 1, 2010, for projects  
16 designed to address the restoration of Puget Sound, funded in a  
17 competitive grant process, that are in conflict with the action  
18 agenda developed by the Puget Sound partnership under RCW 90.71.310.  
19 However, this subsection does not prevent an appropriation from the  
20 state toxics control account to the department of revenue to enforce  
21 compliance with the hazardous substance tax imposed in chapter 82.21  
22 RCW.

23 (7) Except during the ((2011-2013)) 2015-2017 fiscal biennium,  
24 one percent of the moneys collected under RCW 82.21.030 shall be  
25 allocated only for public participation grants to persons who may be  
26 adversely affected by a release or threatened release of a hazardous  
27 substance and to not-for-profit public interest organizations. The  
28 primary purpose of these grants is to facilitate the participation by  
29 persons and organizations in the investigation and remedying of  
30 releases or threatened releases of hazardous substances and to  
31 implement the state's solid and hazardous waste management  
32 priorities. No grant may exceed sixty thousand dollars. Grants may be  
33 renewed annually. Moneys appropriated for public participation that  
34 are not expended at the close of any biennium revert to the state  
35 toxics control account.

36 (8) The department shall adopt rules for grant or loan issuance  
37 and performance. To accelerate both remedial action and economic  
38 recovery, the department may expedite the adoption of rules necessary  
39 to implement chapter 1, Laws of 2013 2nd sp. sess. using the  
40 expedited procedures in RCW 34.05.353. The department shall initiate

1 the award of financial assistance by August 1, 2013. To ensure the  
2 adoption of rules will not delay financial assistance, the department  
3 may administer the award of financial assistance through interpretive  
4 guidance pending the adoption of rules through July 1, 2014.

5 (9) Except as provided under subsection (3)(k) and (q) of this  
6 section, nothing in chapter 1, Laws of 2013 2nd sp. sess. affects the  
7 ability of a potentially liable person to receive public funding.

8 (10) During the 2015-2017 fiscal biennium the local toxics  
9 control account may also be used for the centennial clean water  
10 program and for the storm water financial assistance program  
11 administered by the department of ecology.

12 NEW SECTION. **Sec. 5.** The following acts or parts of acts are  
13 each repealed:

14 (1) 2015 3rd sp.s. c 3 s 3055 (uncodified) (Department of Ecology  
15 - Reducing Toxic Diesel Emissions 30000428); and

16 (2) 2015 3rd sp.s. c 3 s 3056 (uncodified) (Department of Ecology  
17 - Reducing Toxic Woodstove Emissions 30000429).

18 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of  
20 the state government and its existing public institutions, and takes  
21 effect immediately.

--- END ---