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SENATE BILL 6718

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State of Washington

58th Legislature

2004 Regular Session

By Senators Poulsen and Zarelli

Read first time 02/04/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying remedies for local governments for  
2 hazardous waste cleanup financial assistance; amending RCW 70.105D.070  
3 and 70.105D.080; and declaring an emergency.

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

5 **Sec. 1.** RCW 70.105D.070 and 2003 1st sp.s. c 25 s 933 are each  
6 amended to read as follows:

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

9 (2) The following moneys shall be deposited into the state toxics  
10 control account: (a) Those revenues which are raised by the tax  
11 imposed under RCW 82.21.030 and which are attributable to that portion  
12 of the rate equal to thirty-three one-hundredths of one percent; (b)  
13 the costs of remedial actions recovered under this chapter or chapter  
14 70.105A RCW; (c) penalties collected or recovered under this chapter;  
15 and (d) any other money appropriated or transferred to the account by  
16 the legislature. Moneys in the account may be used only to carry out  
17 the purposes of this chapter, including but not limited to the  
18 following activities:

1 (i) The state's responsibility for hazardous waste planning,  
2 management, regulation, enforcement, technical assistance, and public  
3 education required under chapter 70.105 RCW;

4 (ii) The state's responsibility for solid waste planning,  
5 management, regulation, enforcement, technical assistance, and public  
6 education required under chapter 70.95 RCW;

7 (iii) The hazardous waste cleanup program required under this  
8 chapter;

9 (iv) State matching funds required under the federal cleanup law;

10 (v) Financial assistance for local programs in accordance with  
11 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

12 (vi) State government programs for the safe reduction, recycling,  
13 or disposal of hazardous wastes from households, small businesses, and  
14 agriculture;

15 (vii) Hazardous materials emergency response training;

16 (viii) Water and environmental health protection and monitoring  
17 programs;

18 (ix) Programs authorized under chapter 70.146 RCW;

19 (x) A public participation program, including regional citizen  
20 advisory committees;

21 (xi) Public funding to assist potentially liable persons to pay for  
22 the costs of remedial action in compliance with cleanup standards under  
23 RCW 70.105D.030(2)(e) but only when the amount and terms of such  
24 funding are established under a settlement agreement under RCW  
25 70.105D.040(4) and when the director has found that the funding will  
26 achieve both (A) a substantially more expeditious or enhanced cleanup  
27 than would otherwise occur, and (B) the prevention or mitigation of  
28 unfair economic hardship; and

29 (xii) Development and demonstration of alternative management  
30 technologies designed to carry out the top two hazardous waste  
31 management priorities of RCW 70.105.150.

32 (3) The following moneys shall be deposited into the local toxics  
33 control account: Those revenues which are raised by the tax imposed  
34 under RCW 82.21.030 and which are attributable to that portion of the  
35 rate equal to thirty-seven one-hundredths of one percent.

36 (a) Moneys deposited in the local toxics control account shall be  
37 used by the department for grants or loans to local governments for the  
38 following purposes in descending order of priority: (i) Remedial

1 actions; (ii) hazardous waste plans and programs under chapter 70.105  
2 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C,  
3 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the  
4 assessment and cleanup of sites of methamphetamine production, but not  
5 to be used for the initial containment of such sites, consistent with  
6 the responsibilities and intent of RCW 69.50.511; and (v) cleanup and  
7 disposal of hazardous substances from abandoned or derelict vessels  
8 that pose a threat to human health or the environment. For purposes of  
9 this subsection (3)(a)(v), "abandoned or derelict vessels" means  
10 vessels that have little or no value and either have no identified  
11 owner or have an identified owner lacking financial resources to clean  
12 up and dispose of the vessel. Funds for plans and programs shall be  
13 allocated consistent with the priorities and matching requirements  
14 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During  
15 the 1999-2001 fiscal biennium, moneys in the account may also be used  
16 for the following activities: Conducting a study of whether dioxins  
17 occur in fertilizers, soil amendments, and soils; reviewing  
18 applications for registration of fertilizers; and conducting a study of  
19 plant uptake of metals. During the 2003-05 fiscal biennium, the  
20 legislature may transfer from the local toxics control account to the  
21 state toxics control account such amounts as specified in the omnibus  
22 operating budget bill for methamphetamine lab cleanup.

23 (b) Funds may also be appropriated to the department of health to  
24 implement programs to reduce testing requirements under the federal  
25 safe drinking water act for public water systems. The department of  
26 health shall reimburse the account from fees assessed under RCW  
27 70.119A.115 by June 30, 1995.

28 (c) State funding provided to local governments for remedial action  
29 is limited to appropriations from the local toxics control account and  
30 any other appropriation from the legislature. It is not the intent of  
31 the legislature to provide state funding to local governments for  
32 remedial action through litigation under RCW 70.105D.080.

33 (4) Except for unanticipated receipts under RCW 43.79.260 through  
34 43.79.282, moneys in the state and local toxics control accounts may be  
35 spent only after appropriation by statute.

36 (5) One percent of the moneys deposited into the state and local  
37 toxics control accounts shall be allocated only for public  
38 participation grants to persons who may be adversely affected by a

1 release or threatened release of a hazardous substance and to not-for-  
2 profit public interest organizations. The primary purpose of these  
3 grants is to facilitate the participation by persons and organizations  
4 in the investigation and remedying of releases or threatened releases  
5 of hazardous substances and to implement the state's solid and  
6 hazardous waste management priorities. However, during the 1999-2001  
7 fiscal biennium, funding may not be granted to entities engaged in  
8 lobbying activities, and applicants may not be awarded grants if their  
9 cumulative grant awards under this section exceed two hundred thousand  
10 dollars. No grant may exceed sixty thousand dollars. Grants may be  
11 renewed annually. Moneys appropriated for public participation from  
12 either account which are not expended at the close of any biennium  
13 shall revert to the state toxics control account.

14 (6) No moneys deposited into either the state or local toxics  
15 control account may be used for solid waste incinerator feasibility  
16 studies, construction, maintenance, or operation.

17 (7) The department shall adopt rules for grant or loan issuance and  
18 performance.

19 **Sec. 2.** RCW 70.105D.080 and 1997 c 406 s 6 are each amended to  
20 read as follows:

21 Except as provided in this section and in RCW 70.105D.040(4) (d)  
22 and (f), a person may bring a private right of action, including a  
23 claim for contribution or for declaratory relief, against any other  
24 person liable under RCW 70.105D.040 for the recovery of remedial action  
25 costs. In the action, natural resource damages paid to the state under  
26 this chapter may also be recovered. Recovery shall be based on such  
27 equitable factors as the court determines are appropriate. Remedial  
28 action costs shall include reasonable attorneys' fees and expenses.  
29 Recovery of remedial action costs shall be limited to those remedial  
30 actions that, when evaluated as a whole, are the substantial equivalent  
31 of a department-conducted or department-supervised remedial action.  
32 Substantial equivalence shall be determined by the court with reference  
33 to the rules adopted by the department under this chapter. An action  
34 under this section may be brought after remedial action costs are  
35 incurred but must be brought within three years from the date remedial  
36 action confirms cleanup standards are met or within one year of May 12,  
37 1993, whichever is later. The prevailing party in such an action shall

1 recover its reasonable attorneys' fees and costs. This section applies  
2 to all causes of action regardless of when the cause of action may have  
3 arisen. To the extent a cause of action has arisen prior to May 12,  
4 1993, this section applies retroactively, but in all other respects it  
5 applies prospectively. This section shall not apply, retrospectively  
6 or prospectively, in cases brought by or on behalf of local governments  
7 against the state of Washington or against a Washington state agency.  
8 State funding provided to local governments for remedial action is  
9 limited to those appropriations and grants provided by the legislature  
10 under RCW 70.105D.070 or through other appropriations.

11 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and takes effect  
14 immediately.

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