SENATE BILL REPORT
SB 6157

As of January 26, 2014

Title: An act relating to a hazardous substance tax exemption for certain hazardous substances defined under RCW 82.21.020(1)(c) that are used as agricultural crop protection products and warehoused but not otherwise used, manufactured, packaged, or sold in this state

Brief Description: Concerning a hazardous substance tax exemption for certain hazardous substances defined under RCW 82.21.020(1)(c) that are used as agricultural crop protection products and warehoused but not otherwise used, manufactured, packaged, or sold in this state.

Sponsors: Senators Hatfield, Padden, Hobbs, Schoesler, Hewitt and Ericksen.

Brief History:
Committee Activity: Agriculture, Water & Rural Economic Development: 1/23/14.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith 786-7410

Background: The tax imposed on hazardous substances was initiated in the late 1980s, first by the Legislature and then by Initiative 97.

The tax base of the hazardous substance tax created by the Model Toxics Control Act (MCTA) is the wholesale value of substances defined as hazardous. It is a privilege tax imposed on the first possession in Washington State of petroleum products under the federal Comprehensive Environmental Response, Compensation, and Liability Act; pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act; and substances designated by rule by the Washington State Department of Ecology to present a threat to human health or the environment.

The tax rate is 0.7 percent. The proceeds, up to $144 million for fiscal year 2013, are deposited into two accounts: 56 percent to the state toxics control account; and 44 percent to the local toxics control account. Any overage is deposited into the environmental legacy stewardship account. The purpose of MCTA is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

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.

There are exemptions from the hazardous substance tax, one of which includes persons and activities that the state is prohibited from taxing under the United States Constitution. This prohibition applies to materials in interstate commerce under article 1, section 8, clause 3, of the Constitution. This clause empowers Congress "to regulate commerce with foreign nations, and among several states, and with the indian tribes."

Agricultural crop protection products that meet the definition of pesticides under MCTA are sometimes manufactured at an out-of-state location and then are shipped to Washington warehouses. Sometimes the product is shipped from the Washington warehouse to a Washington retailer for sale to the Washington farmer. These products are subject to the hazardous substance tax because they are not items in interstate commerce.

A question has arisen when the product is shipped out of Washington from the warehouse. The Department of Revenue (DOR) rules allow the exemption if the product in the warehouse is already owned by the out-of-state recipient when the product is received at the warehouse. Under any other shipping scenario, DOR levies the tax on the product even though it is ultimately sold out of state.

Summary of Bill: An exemption from the hazardous substance tax imposed under MCTA is created. It applies to the possession of an agricultural crop protection product when that possession is solely for use by a farmer and the product is warehoused in Washington or transported to or from Washington. To qualify for this exemption, the person possessing the product may not use, repackage, manufacture, or sell the product in Washington.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony: PRO: These shipments are being made to Oregon and California, instead of Washington, because of this tax. We need to help our local economies. These products are bought by the end user on an as-needed basis, and the need is immediate. When the farmer sees a pest or disease in his field, waiting even hours to apply the chemical can mean the difference between saving and losing the crop. The product is warehoused at the regional distribution center until it is needed. The manufacturer of the product does not know where the ultimate consumer will be located until the orders to ship out of the warehouse come in. These are packaged goods, moved on pallets and totes with 24 pallets equaling a truckload. Outbound orders are shipped from the warehouse one or two pallets at a time.

CON: There is great complexity in how these taxes are applied. For the 25 years of its existence, the hazardous substance tax fund has never had enough money in it to do the job it is designed to do. This is especially so with the $250 million sweep last year. This money pays for the pesticide-return program for safe disposal. This bill is harmful because it reduces the funds available to support many other preventative programs as well as spill response and site cleanup. The impact of business moving out of state is unclear. The math said to support the negative trucking impact does not add up.

Persons Testifying: PRO: Senator Padden; Cindi Holmstrom, Matthew Ewers, Inland Empire Distribution Systems; Brandon Houskeeper, Assn. of WA Business.

CON: Darcy Nonemacher, WA Environmental Council; Denise Clifford, Dept. of Ecology.