

SENATE BILL REPORT

SB 5943

As of June 12, 2017

Title: An act relating to cleaning up contaminated sites across Washington.

Brief Description: Cleaning up contaminated sites across Washington.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 6/14/17.

Brief Summary of Bill

- Requires at least 60 percent of State Toxic Control Account (STCA) and Local Toxic Control Account (LTCA) be used for remedial actions and to assist with costs of cleanup activities.
- Removes certain uses of STCA, LTCA, and Environmental Legacy Stewardship Account funds.
- Removes requirements for public hearings and public comments under certain circumstances.
- Exempts independent remedial actions from procedural requirements from certain permits and local government permits or approvals.
- Requires Department of Ecology to ensure aspects of a remedial action not challenged or appealed proceed on schedule.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

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Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (Ecology) to ensure that the sites at which hazardous substances are released are cleaned up. Ecology is responsible for investigating, conducting remedial actions, enforcing actions to protect human health, and providing technical and administrative assistance. Ecology must prioritize funding to clean up hazardous waste sites and prevent future hazardous waste sites. Hazardous waste sites are ranked by consideration of the amount and

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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.

Ecology is required to adopt rules to provide for public participation; establish a hazard ranking system for hazardous waste sites; establish deadlines for initiating an investigation of a hazardous waste site; and publish and periodically update minimum cleanup standards that are at least as stringent as standards established under federal cleanup law. In addition, Ecology must apply industrial cleanup standards at industrial properties. Industrial properties that are cleaned up to industrial cleanup standards must be approved by Ecology to be used for other purposes and may be required to clean up to more stringent standards necessary to meet the conditions of non-industrial uses.

Ecology may establish model remedies for routine cleanups at common categories of facilities and types of hazardous substances. When developing model remedies, Ecology must identify requirements for characterizing a facility, how the model remedy meets cleanup standards, and provide an opportunity for public comment. In addition, Ecology must provide public notice and consider public comments on the proposed use of a model remedy at a facility.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans.

Liable parties must clean up sites contaminated with hazardous materials. A potentially liable person includes: a current or past facility owner or operator; or someone who owned the hazardous substance and arranged for its disposal or treatment or transport. When there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site.

Ecology may issue orders or enter into consent decrees or agreed orders that include written opinions with environmental covenants to protect human health and the environment. Ecology must consult with local governments prior to establishing environmental covenants. In general, a person may cleanup a site with or without supervision by Ecology. Ecology ensures that the substantive provisions of required permits are met. Ecology supervises remedial actions under a formal cleanup process for consent decrees with settlement of liability, agreed orders, and enforcement orders.

A property owner may choose to independently cleanup without any supervision or consultation by Ecology. The property owner determines the clean up schedule, as well as the scope and extent of the cleanup. However, Ecology will not provide an opinion on the sufficiency of the clean up. Independent cleanups do not require public notice.

As with an independent cleanup, under the Voluntary Cleanup Program (VCP) the property owner determines the cleanup schedule, as well as the scope and extent of the cleanup. However, through the VCP, a property owner may request technical assistance and an opinion on the sufficiency of the cleanup from Ecology. The property owner must cover the

costs of the reviews and technical assistance provided by Ecology. Based on the review, Ecology either issues an opinion of "No Further Action" upon successful cleanup of a site or identifies what additional work is needed.

The attorney general, at the request of Ecology, is authorized to recover all costs and damages from a liable party. The attorney general may enter into a settlement with a potentially liable person when Ecology finds, after providing public notice and any required hearing, that a proposed settlement would provide for a quicker cleanup of the hazardous substances. The attorney general may expedite a settlement with a liable party who is responsible for an insignificant amount and toxicity of a hazardous substance. A hearing is not required unless Ecology determines one is necessary or at least ten people request a hearing. The attorney general is required to recover Ecology's costs for investigating, cleaning up, and entering into orders.

Any person may bring a civil action to require Ecology to conduct non-discretionary actions under MTCAs. A person must provide thirty days' notice prior to bringing the civil action unless a substantial risk exists.

MTCAs are funded by a 0.7 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 (STCA) receives 56 percent of the revenue obtained from the hazardous substance tax (HST), and 44 percent is deposited into the Local Toxic Control Account (LTCA). Once \$140 million of the HST is distributed to STCA and LTCA, the remainder collected must be deposited into the Environmental Legacy Stewardship Account (ELSA).

STCA funds activities such as hazardous waste cleanup and solid waste programs; assisting potentially liable persons to pay for the costs of remedial action; storm water pollution control projects; the oil and hazardous materials spill prevention and preparedness program; water and environmental health protection and monitoring programs; a public participation program; and air quality programs for reducing public exposure to toxic air pollution.

The use of LTCA funds are prioritized for extended grant agreements with local jurisdictions conducting clean ups, remedial actions, hazardous waste plans, and solid waste plans. LTCA funds may be also used for purposes under STCA and LTCA when the legislature determines that priorities have exceeded funds available in those accounts.

The ELSA funds may be used for grants and loans to local governments for performance based projects, model remedies, and projects that will be completed more quickly than on average. ELSA funds may also be used for authorized STCA and LTCA purposes, grants and loans for low-impact development retrofit projects and projects that reduce storm water pollution, and to cleanup hazardous substances from derelict vessels.

Summary of Bill: By January 1, 2020, Ecology must review its classification of hazardous substances for purposes of the HST to determine, based on best available data, if any substances should be removed from the classification.

Ecology must notify the appropriate legislative committees when adopting a minimum cleanup standard that is more stringent than any federal law, including the federal cleanup law. Ecology must ensure that minimum cleanup standards do not require cleanup of a remedial action site that is beyond the reasonable control of the person cleaning up the site, such as the release of a hazardous substance migrating from off-site onto the cleanup site.

Ecology may only require more stringent cleanup standards for an industrial site to meet non-industrial use conditions when necessary to substantially reduce risks to human health or safety.

A city or county that does not provide comment within 60 days after consultation by Ecology on orders or consent decrees establishing an environmental covenant, waives its right to comment. Ecology has no obligation to accept or consider comments after 60 days or delay establishing the environmental covenant.

The court must provide for an expedited review of settlement agreements and approve a lawful agreement within 60 days of the proposal date, unless the parties stipulate a later date for approval.

An independent remedial action is exempt from procedural requirements from certain permits and from local government permits or approvals. Ecology must provide a written opinion regarding whether an independent cleanup meets the substantive requirements of MTCA, within 90 days of receiving the request. Ecology is not required to ensure that the substantive permit requirements are met for independent remedial actions. Additionally, independent cleanups and remedial actions are not subject to SEPA.

Ecology must ensure to the greatest extent possible, that when a challenge or appeal to an Ecology conducted remedial action or any permit, certification, or approval obtained for the remedial action, the aspects of the remedial action not challenged or appealed proceeds on schedule. This applies only to remedial actions conducted by Ecology or by a person conducting a remedial action under a consent decree, agreed order, or order.

The following provisions are removed:

- requiring public notice and hearings prior to the attorney general entering into a settlement that would provide for a quicker cleanup of hazardous substances or expediting a settlement with a liable party responsible for an insignificant amount and toxicity of a hazardous substance;
- allowing any person to bring a civil action to require Ecology to conduct non-discretionary actions under the MTCA statutes; and
- requiring Ecology to provide public notice and consider public comments on the proposed use of a model remedy at a facility.

Of the funds appropriated to the STCA and LTCA, at least 60 percent must be used for the following purposes:

- hazardous waste cleanup program;
- state matching funds required by federal law;
- public funding to assist potentially liable persons to pay for remedial actions;
- alternative management technologies for management of hazardous waste;

- public funding to assist prospective purchasers to pay for cleanup of facilities located within a redevelopment opportunity zone; and
- grants and loans to local governments to address remedial activities.

The following uses of STCA funds are removed:

- state government programs for recycling or disposal of paint and hazardous wastes from households, small businesses, and agriculture;
- oil and hazardous materials spill prevention, preparedness, training, and response activities;
- water and environmental health protection and monitoring programs;
- water pollution control facility financing;
- public participation program;
- state agriculture and health programs for the safe use, reduction, recycling and disposal of pesticides;
- storm water pollution control projects;
- air quality programs; and
- petroleum-based plastic or polystyrene foam debris cleanup activities in marine or fresh waters.

The following uses of LTCA funds are removed:

- storm water pollution source projects that: work in conjunction with a remedial action; protect completed remedial actions against recontamination; or prevent hazardous cleanup sites; and
- petroleum-based plastic or polystyrene foam debris cleanup activities in marine or fresh waters.

The use of ELSA funds for grants or loans for low-impact development retrofit projects to reduce storm water pollution from existing infrastructure is removed.

Conforming revisions are made.

Appropriation: None.

Fiscal Note: Requested on June 6, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.