

2SHB 3181 - H AMD TO H AMD (H-5591.5/10) 1600  
By Representatives Dunshee, Kessler

NOT CONSIDERED 03/11/2010

1 On page 5, after line 30 of the amendment, insert the following:

2 "Sec. 7. RCW 39.34.030 and 2009 c 202 s 6 are each amended to read  
3 as follows:

4 (1) Any power or powers, privileges or authority exercised or  
5 capable of exercise by a public agency of this state may be exercised  
6 and enjoyed jointly with any other public agency of this state having  
7 the power or powers, privilege or authority, and jointly with any  
8 public agency of any other state or of the United States to the extent  
9 that laws of such other state or of the United States permit such joint  
10 exercise or enjoyment. Any agency of the state government when acting  
11 jointly with any public agency may exercise and enjoy all of the  
12 powers, privileges and authority conferred by this chapter upon a  
13 public agency.

14 (2) Any two or more public agencies may enter into agreements with  
15 one another for joint or cooperative action pursuant to the provisions  
16 of this chapter, except that any such joint or cooperative action by  
17 public agencies which are educational service districts and/or school  
18 districts (~~shall~~) must comply with the provisions of RCW 28A.320.080.  
19 Appropriate action by ordinance, resolution or otherwise pursuant to  
20 law of the governing bodies of the participating public agencies  
21 (~~shall be~~) is necessary before any such agreement may enter into  
22 force.

23 (3) Any such agreement (~~shall~~) must specify the following:

24 (a) Its duration;

25 (b) The precise organization, composition and nature of any  
26 separate legal or administrative entity created thereby together with  
27 the powers delegated thereto, provided such entity may be legally  
28 created. Such entity may include a nonprofit corporation organized  
29 pursuant to chapter 24.03 or 24.06 RCW whose membership is limited  
30 solely to the participating public agencies or a partnership organized

1 pursuant to chapter 25.04 or 25.05 RCW whose partners are limited  
2 solely to participating public agencies, or a limited liability company  
3 organized under chapter 25.15 RCW whose membership is limited solely to  
4 participating public agencies, or a trust entity established for the  
5 purpose of funding remedial action under chapter 70.105D RCW and whose  
6 beneficiaries are limited solely to the participating public agencies,  
7 and the funds of any such corporation, partnership, ((~~or~~)) limited  
8 liability company ((~~shall be~~)), or trust is subject to audit in the  
9 manner provided by law for the auditing of public funds;

10 (c) Its purpose or purposes;

11 (d) The manner of financing the joint or cooperative undertaking  
12 and of establishing and maintaining a budget therefor;

13 (e) The permissible method or methods to be employed in  
14 accomplishing the partial or complete termination of the agreement and  
15 for disposing of property upon such partial or complete termination;  
16 and

17 (f) Any other necessary and proper matters.

18 (4) In the event that the agreement does not establish a separate  
19 legal entity to conduct the joint or cooperative undertaking, the  
20 agreement shall contain, in addition to provisions specified in  
21 subsection (3)(a), (c), (d), (e), and (f) of this section, the  
22 following:

23 (a) Provision for an administrator or a joint board responsible for  
24 administering the joint or cooperative undertaking. In the case of a  
25 joint board, public agencies that are party to the agreement ((~~shall~~))  
26 must be represented; and

27 (b) The manner of acquiring, holding and disposing of real and  
28 personal property used in the joint or cooperative undertaking. Any  
29 joint board is authorized to establish a special fund with a state,  
30 county, city, or district treasurer servicing an involved public agency  
31 designated "Operating fund of . . . . . joint board".

32 (5) No agreement made pursuant to this chapter relieves any public  
33 agency of any obligation or responsibility imposed upon it by law  
34 except that:

35 (a) To the extent of actual and timely performance thereof by a  
36 joint board or other legal or administrative entity created by an  
37 agreement made pursuant to this chapter, the performance may be offered  
38 in satisfaction of the obligation or responsibility; and

1 (b) With respect to one or more public agencies purchasing or  
2 otherwise contracting through a bid, proposal, or contract awarded by  
3 another public agency or by a group of public agencies, any statutory  
4 obligation to provide notice for bids or proposals that applies to the  
5 public agencies involved is satisfied if the public agency or group of  
6 public agencies that awarded the bid, proposal, or contract complied  
7 with its own statutory requirements and either (i) posted the bid or  
8 solicitation notice on a web site established and maintained by a  
9 public agency, purchasing cooperative, or similar service provider, for  
10 purposes of posting public notice of bid or proposal solicitations, or  
11 (ii) provided an access link on the state's web portal to the notice.

12 (6) Financing of joint projects by agreement (~~shall~~) must be as  
13 provided by law.

14 **Sec. 8.** RCW 43.88.195 and 1996 c 186 s 509 are each amended to  
15 read as follows:

16 (~~After August 11, 1969~~) Except for trusts established under RCW  
17 70.105D.070 for the purpose of dispersing funds for remedial action, no  
18 state agency, state institution, state institution of higher education,  
19 which (~~shall~~) includes all state universities, regional universities,  
20 The Evergreen State College, and community colleges, (~~shall~~) may  
21 establish any new accounts or funds which are to be located outside of  
22 the state treasury(~~PROVIDED, That~~). However, the office of  
23 financial management (~~shall be~~) is authorized to grant permission for  
24 the establishment of such an account or fund outside of the state  
25 treasury only when the requesting agency presents compelling reasons of  
26 economy and efficiency which could not be achieved by placing such  
27 funds in the state treasury. When the director of financial management  
28 authorizes the creation of such fund or account, the director (~~shall~~  
29 ~~forthwith~~) must give written notice of the fact to the standing  
30 committees on ways and means of the house and senate(~~PROVIDED~~  
31 ~~FURTHER, That~~). Agencies authorized to create local accounts (~~will~~)  
32 must utilize the services of the state treasurer's office to ensure  
33 that new or ongoing relationships with financial institutions are in  
34 concert with statewide policies and procedures pursuant to RCW  
35 43.88.160(1).

1       **Sec. 9.** RCW 70.105D.070 and 2009 c 564 s 951 and 2009 c 187 s 5  
2 are each amended to read as follows:

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

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

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

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

21       (iii) The hazardous waste cleanup program required under this  
22 chapter;

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

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

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

29       (vii) Hazardous materials emergency response training;

30       (viii) Water and environmental health protection and monitoring  
31 programs;

32       (ix) Programs authorized under chapter 70.146 RCW;

33       (x) A public participation program, including regional citizen  
34 advisory committees;

35       (xi) Public funding to assist potentially liable persons to pay for  
36 the costs of remedial action in compliance with cleanup standards under  
37 RCW 70.105D.030(2)(e) but only when the amount and terms of such  
38 funding are established under a settlement agreement under RCW

1 70.105D.040(4) and when the director has found that the funding will  
2 achieve both (A) a substantially more expeditious or enhanced cleanup  
3 than would otherwise occur, and (B) the prevention or mitigation of  
4 unfair economic hardship;

5 (xii) Development and demonstration of alternative management  
6 technologies designed to carry out the hazardous waste management  
7 priorities of RCW 70.105.150; and

8 (xiii) During the 2009-2011 fiscal biennium, shoreline update  
9 technical assistance.

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

14 (a) Moneys deposited in the local toxics control account (~~shall~~)  
15 must be used by the department for grants or loans to local governments  
16 for the following purposes in descending order of priority:

17 (i) Remedial actions;

18 (ii) Hazardous waste plans and programs under chapter 70.105 RCW;

19 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,  
20 70.95I, and 70.105 RCW;

21 (iv) Funds for a program to assist in the assessment and cleanup of  
22 sites of methamphetamine production, but not to be used for the initial  
23 containment of such sites, consistent with the responsibilities and  
24 intent of RCW 69.50.511; and

25 (v) Cleanup and disposal of hazardous substances from abandoned or  
26 derelict vessels, defined for the purposes of this section as vessels  
27 that have little or no value and either have no identified owner or  
28 have an identified owner lacking financial resources to clean up and  
29 dispose of the vessel, that pose a threat to human health or the  
30 environment.

31 (b) Funds for plans and programs (~~shall~~) must be allocated  
32 consistent with the priorities and matching requirements established in  
33 chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any  
34 applicant that is a Puget Sound partner, as defined in RCW 90.71.010,  
35 along with any project that is referenced in the action agenda  
36 developed by the Puget Sound partnership under RCW 90.71.310, (~~shall~~)  
37 must, except as conditioned by RCW 70.105D.120, receive priority for  
38 any available funding for any grant or funding programs or sources that

1 use a competitive bidding process. During the 2007-2009 fiscal  
2 biennium, moneys in the account may also be used for grants to local  
3 governments to retrofit public sector diesel equipment and for storm  
4 water planning and implementation activities.

5 (c) To expedite cleanups throughout the state, the department  
6 (~~shall~~) must partner with local communities and liable parties for  
7 cleanups. The department is authorized to use the following additional  
8 strategies in order to ensure a healthful environment for future  
9 generations:

10 (i) The director may alter grant-matching requirements to create  
11 incentives for local governments to expedite cleanups when one of the  
12 following conditions exists:

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

15 (B) Funding would create new substantial economic development,  
16 public recreational, or habitat restoration opportunities that would  
17 not otherwise occur; or

18 (C) Funding would create an opportunity for acquisition and  
19 redevelopment of vacant, orphaned, or abandoned property under RCW  
20 70.105D.040(5) that would not otherwise occur;

21 (ii) The use of outside contracts to conduct necessary studies;

22 (iii) The purchase of remedial action (~~cost-cap~~) environmental  
23 insurance, when necessary to expedite multiparty clean-up efforts.

24 (d) To facilitate and expedite cleanups using funds from the local  
25 toxics control account, the director may establish grant-funded trusts  
26 to hold and disperse local toxics control account funds and funds from  
27 local governments to be used for remedial actions.

28 (4) Except for unanticipated receipts under RCW 43.79.260 through  
29 43.79.282, moneys in the state and local toxics control accounts may be  
30 spent only after appropriation by statute.

31 (5) Except during the 2009-2011 fiscal biennium, one percent of the  
32 moneys deposited into the state and local toxics control accounts  
33 (~~shall~~) must be allocated only for public participation grants to  
34 persons who may be adversely affected by a release or threatened  
35 release of a hazardous substance and to not-for-profit public interest  
36 organizations. The primary purpose of these grants is to facilitate  
37 the participation by persons and organizations in the investigation and  
38 remedying of releases or threatened releases of hazardous substances

1 and to implement the state's solid and hazardous waste management  
2 priorities. No grant may exceed sixty thousand dollars. Grants may be  
3 renewed annually. Moneys appropriated for public participation from  
4 either account which are not expended at the close of any biennium  
5 shall revert to the state toxics control account.

6 (6) No moneys deposited into either the state or local toxics  
7 control account may be used for solid waste incinerator feasibility  
8 studies, construction, maintenance, or operation, or, after January 1,  
9 2010, for projects designed to address the restoration of Puget Sound,  
10 funded in a competitive grant process, that are in conflict with the  
11 action agenda developed by the Puget Sound partnership under RCW  
12 90.71.310.

13 (7) The department (~~shall~~) must adopt rules for grant or loan  
14 issuance and performance.

15 (8) During the 2007-2009 and 2009-2011 fiscal biennia, the  
16 legislature may transfer from the local toxics control account to  
17 either the state general fund or the oil spill prevention account, or  
18 both such amounts as reflect excess fund balance in the account.

19 (9) During the 2009-2011 fiscal biennium, the local toxics control  
20 account may also be used for a standby rescue tug at Neah Bay, local  
21 government shoreline update grants, private and public sector diesel  
22 equipment retrofit, and oil spill prevention, preparedness, and  
23 response activities.

24 (10) During the 2009-2011 fiscal biennium, the legislature may  
25 transfer from the state toxics control account to the state general  
26 fund such amounts as reflect the excess fund balance in the account."

27 Renumber the remaining sections consecutively, correct any internal  
28 references accordingly, and correct the title.

EFFECT: Authorizes the Department of Ecology to purchase  
environmental insurance to expedite multiparty clean-up efforts.  
Authorizes, through the Interlocal Cooperation Act, a trust entity to  
disperse funds associated with remedial action programs. Allows the  
Director of the Department of Ecology to establish grant-funded trusts  
to hold and disperse LTCA funds and funds from local governments to be  
used for remedial actions.

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