
SUBSTITUTE SENATE BILL 6570

State of Washington

64th Legislature

2016 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senator Ericksen)

READ FIRST TIME 02/05/16.

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
4 ss 3062, 3055, and 3056 (uncodified); reenacting and amending RCW
5 70.105D.070; creating a new section; and declaring an emergency.

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

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

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

3 **FOR THE DEPARTMENT OF ECOLOGY**

4	General Fund—State Appropriation (FY 2016)	. . . . .	((\$24,694,000))
5			<u>\$24,693,000</u>
6	General Fund—State Appropriation (FY 2017)	. . . . .	((\$24,795,000))
7			<u>\$24,771,000</u>
8	General Fund—Federal Appropriation	. . . . .	\$103,800,000
9	General Fund—Private/Local Appropriation	. . . . .	\$22,398,000
10	Reclamation Account—State Appropriation	. . . . .	\$3,926,000
11	Flood Control Assistance Account—State Appropriation	. . .	\$2,068,000
12	State Emergency Water Projects Revolving Account—State		
13	Appropriation	. . . . .	\$40,000
14	Waste Reduction/Recycling/Litter Control—State		
15	Appropriation	. . . . .	((\$13,163,000))
16			<u>\$13,173,000</u>
17	State Drought Preparedness Account—State Appropriation	. . .	\$204,000
18	State and Local Improvements Revolving Account (Water		
19	Supply Facilities)—State Appropriation	. . . . .	\$447,000
20	Aquatic Algae Control Account—State Appropriation	. . . . .	\$518,000
21	Water Rights Tracking System Account—State Appropriation	. .	\$46,000
22	Site Closure Account—State Appropriation	. . . . .	\$578,000
23	Wood Stove Education and Enforcement Account—State		
24	Appropriation	. . . . .	\$547,000
25	Worker and Community Right-to-Know Account—State		
26	Appropriation	. . . . .	\$1,790,000
27	Water Rights Processing Account—State Appropriation	. . . . .	\$39,000
28	State Toxics Control Account—State Appropriation	. .	((\$132,643,000))
29			<u>\$117,073,000</u>
30	State Toxics Control Account—Private/Local		
31	Appropriation	. . . . .	\$499,000
32	Local Toxics Control Account—State Appropriation	. . .	((\$4,628,000))
33			<u>\$3,342,000</u>
34	Water Quality Permit Account—State Appropriation	. .	((\$41,644,000))
35			<u>\$44,101,000</u>
36	Underground Storage Tank Account—State Appropriation	. . .	\$3,544,000
37	Biosolids Permit Account—State Appropriation	. . . . .	\$2,108,000
38	Environmental Legacy Stewardship Account—State		
39	Appropriation	. . . . .	((\$44,295,000))

1		<u>\$34,374,000</u>
2	Hazardous Waste Assistance Account—State	
3	Appropriation	((\$6,029,000))
4		<u>\$6,040,000</u>
5	Radioactive Mixed Waste Account—State Appropriation	((\$14,900,000))
6		<u>\$15,753,000</u>
7	Air Pollution Control Account—State Appropriation	((\$3,284,000))
8		<u>\$3,984,000</u>
9	Oil Spill Prevention Account—State Appropriation	((\$8,594,000))
10		<u>\$8,605,000</u>
11	Air Operating Permit Account—State Appropriation	\$3,231,000
12	Freshwater Aquatic Weeds Account—State Appropriation	\$1,439,000
13	Oil Spill Response Account—State Appropriation	\$7,076,000
14	Water Pollution Control Revolving Administration	
15	Account—State Appropriation	\$579,000
16	Water Pollution Control Revolving Account—State	
17	Appropriation	\$493,000
18	Water Pollution Control Revolving Account—Federal	
19	Appropriation	\$2,337,000
20	TOTAL APPROPRIATION.	((\$476,376,000))
21		<u>\$453,616,000</u>

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

24 (1) \$170,000 of the oil spill prevention account—state
25 appropriation is provided solely for a contract with the University
26 of Washington's sea grant program to continue an educational program
27 targeted to small spills from commercial fishing vessels, ferries,
28 cruise ships, ports, and marinas.

29 (2) \$495,000 of the state toxics control account—state
30 appropriation and \$625,000 of the local toxics control account—state
31 appropriation is provided solely for the expansion of the local
32 source control program by adding additional capacity in the Columbia
33 River basin and Clark county.

34 (3) \$310,000 of the state toxics control account—state
35 appropriation is provided solely for the Spokane river regional
36 toxics task force to address elevated levels of polychlorinated
37 biphenyls in the Spokane river.

38 (4) Within the amounts appropriated in this section, the
39 department shall conduct a stakeholder process with the department of

1 fish and wildlife to develop recommendations to restructure the fees
2 under RCW 90.16.050 and report to the appropriate committees of the
3 legislature by December 1, 2015.

4 (5) \$1,044,000 of the oil spill prevention account—state
5 appropriation is provided solely for the implementation of chapter
6 274, Laws of 2015 (ESHB 1449).

7 (6) \$3,883,000 of the state toxics control account—state
8 appropriation is provided solely for the implementation of Engrossed
9 Second Substitute House Bill No. 1472 (chemical action plans), Second
10 Substitute Senate Bill No. 5056 (safer chemicals/action plans),
11 Substitute Senate Bill No. 6131 (safer chemicals), or any of these.
12 If none of these bills are enacted by July 10, 2015, the amount
13 provided in this subsection shall lapse.

14 (7) \$134,000 of the general fund—state appropriation for fiscal
15 year 2016 is provided solely for implementation of chapter 144, Laws
16 of 2015 (SHB 1851).

17 (8) \$135,000 of the general fund—state appropriation for fiscal
18 year 2016 and \$135,000 of the general fund—state appropriation for
19 fiscal year 2017 are provided solely for the Walla Walla watershed
20 management partnership to address water resource and management
21 issues in the Walla Walla watershed.

22 (9)(a) \$14,000,000 of the general fund—state appropriation for
23 fiscal year 2016 and \$14,000,000 of the general fund—state
24 appropriation for fiscal year 2017 are for activities within the
25 water resources program.

26 (b) Of the amounts provided in (a) of this subsection, \$500,000
27 of the general fund—state appropriation for fiscal year 2017 is
28 provided solely for processing water right permit applications only
29 if the department of ecology issues at least five hundred water right
30 decisions in fiscal year 2016. If the department of ecology does not
31 issue at least five hundred water right decisions in fiscal year
32 2016, the amount provided in this subsection shall lapse and remain
33 unexpended. Permit decisions for the Columbia river basin count
34 toward the five hundred water rights decisions under this subsection.
35 The department of ecology shall submit a report to the office of
36 financial management and the state treasurer by June 30, 2016, that
37 documents whether five hundred water right decisions were issued in
38 fiscal year 2016. For the purposes of this subsection, applications
39 that are voluntarily withdrawn by an applicant do not count towards

1 the five hundred water right decision requirement. For the purposes
2 of water budget-neutral requests under chapter 173-539A WAC, multiple
3 domestic connections authorized within a single water budget-neutral
4 decision are considered one decision for the purposes of this
5 subsection.

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

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

15 **FOR THE DEPARTMENT OF ECOLOGY**

16 Storm Water Financial Assistance Program (30000535)

17 The appropriations in this section are subject to the following
18 conditions and limitations:

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

21 (2) \$981,000 of the appropriation is provided solely for the
22 Washington State University LID frontage - water quality project.

23 Appropriation:

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

32 **Sec. 4.** RCW 70.105D.070 and 2015 3rd sp.s. c 4 s 969 and 2015
33 3rd sp.s. c 3 s 7035 are each reenacted and amended to read as
34 follows:

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

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

11 (b) The limit on distributions of moneys collected under RCW
12 82.21.030 to the state and local toxics control accounts for the
13 fiscal year beginning July 1, 2013, is one hundred forty million
14 dollars.

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

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

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

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

30 (c) The hazardous waste clean-up program required under this
31 chapter;

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

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

35 (f) State government programs for the safe reduction, recycling,
36 or disposal of paint and hazardous wastes from households, small
37 businesses, and agriculture;

38 (g) Oil and hazardous materials spill prevention, preparedness,
39 training, and response activities;

1 (h) Water and environmental health protection and monitoring
2 programs;

3 (i) Programs authorized under chapter 70.146 RCW;

4 (j) A public participation program;

5 (k) Public funding to assist potentially liable persons to pay
6 for the costs of remedial action in compliance with clean-up
7 standards under RCW 70.105D.030(2)(e) but only when the amount and
8 terms of such funding are established under a settlement agreement
9 under RCW 70.105D.040(4) and when the director has found that the
10 funding will achieve both: (i) A substantially more expeditious or
11 enhanced cleanup than would otherwise occur; and (ii) the prevention
12 or mitigation of unfair economic hardship;

13 (l) Development and demonstration of alternative management
14 technologies designed to carry out the hazardous waste management
15 priorities of RCW 70.105.150;

16 (m) State agriculture and health programs for the safe use,
17 reduction, recycling, or disposal of pesticides;

18 (n) Storm water pollution control projects and activities that
19 protect or preserve existing remedial actions or prevent hazardous
20 clean-up sites;

21 (o) Funding requirements to maintain receipt of federal funds
22 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
23 seq.);

24 (p) Air quality programs and actions for reducing public exposure
25 to toxic air pollution;

26 (q) Public funding to assist prospective purchasers to pay for
27 the costs of remedial action in compliance with clean-up standards
28 under RCW 70.105D.030(2)(e) if:

29 (i) The facility is located within a redevelopment opportunity
30 zone designated under RCW 70.105D.150;

31 (ii) The amount and terms of the funding are established under a
32 settlement agreement under RCW 70.105D.040(5); and

33 (iii) The director has found the funding meets any additional
34 criteria established in rule by the department, will achieve a
35 substantially more expeditious or enhanced cleanup than would
36 otherwise occur, and will provide a public benefit in addition to
37 cleanup commensurate with the scope of the public funding;

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

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

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

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

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

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

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

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

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

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

26 (i) Extended grant agreements entered into under (e)(i) of this
27 subsection;

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

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

34 (B) Brownfield properties within a redevelopment opportunity zone
35 if the local government is a prospective purchaser of the property
36 and there is a department-approved remedial action work plan or
37 equivalent document under the federal cleanup law;

38 (iii) Storm water pollution source projects that: (A) Work in
39 conjunction with a remedial action; (B) protect completed remedial

1 actions against recontamination; or (C) prevent hazardous clean-up
2 sites;

3 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;
4 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
5 70.95I, and 70.105 RCW;

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

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

12 (b) Funds for plans and programs must be allocated consistent
13 with the priorities and matching requirements established in chapters
14 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

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

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

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

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

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

35 (C) The department may not allocate future funding to an extended
36 grant agreement unless the local government has demonstrated to the
37 department that funds awarded under the agreement during the previous
38 biennium have been substantially expended or contracts have been
39 entered into to substantially expend the funds;

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

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

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

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

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

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

29 (B) Funding would create new substantial economic development,
30 public recreational opportunities, or habitat restoration
31 opportunities that would not otherwise occur; or

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

35 (vii) When pending grant applications under (e)(iv) and (v) of
36 this subsection (4) exceed the amount of funds available, designated
37 redevelopment opportunity zones must receive priority for
38 distribution of available funds.

39 (f) To expedite multiparty clean-up efforts, the department may
40 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal

1 biennium, moneys in the local toxics control account may be spent on
2 projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of
3 2013 2nd sp. sess.

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

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

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

32 (8) The department shall adopt rules for grant or loan issuance
33 and performance. To accelerate both remedial action and economic
34 recovery, the department may expedite the adoption of rules necessary
35 to implement chapter 1, Laws of 2013 2nd sp. sess. using the
36 expedited procedures in RCW 34.05.353. The department shall initiate
37 the award of financial assistance by August 1, 2013. To ensure the
38 adoption of rules will not delay financial assistance, the department
39 may administer the award of financial assistance through interpretive
40 guidance pending the adoption of rules through July 1, 2014.

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

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

8 **Sec. 5.** 2015 3rd sp.s. c 3 s 3055 (uncodified) is amended to
9 read as follows:

10 **FOR THE DEPARTMENT OF ECOLOGY**

11 Reducing Toxic Diesel Emissions (30000428)

12 Appropriation:

13	State Toxics Control Account—State.	((\$1,000,000))
14		<u>\$500,000</u>
15	Prior Biennia (Expenditures).	\$0
16	Future Biennia (Projected Costs).	\$8,000,000
17	TOTAL.	((\$9,000,000))
18		<u>\$8,500,000</u>

19 **Sec. 6.** 2015 3rd sp.s. c 3 s 3056 (uncodified) is amended to
20 read as follows:

21 **FOR THE DEPARTMENT OF ECOLOGY**

22 Reducing Toxic Woodstove Emissions (30000429)

23 Appropriation:

24	State Toxics Control Account—State.	((\$2,000,000))
25		<u>\$1,000,000</u>
26	Prior Biennia (Expenditures).	\$0
27	Future Biennia (Projected Costs).	\$8,000,000
28	TOTAL.	((\$10,000,000))
29		<u>\$9,000,000</u>

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of
32 the state government and its existing public institutions, and takes
33 effect immediately.

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