Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

ESSB 5993

Brief Description: Reforming the financial structure of the model toxics control program.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Frockt, Billig, Liias and Hunt).

Brief Summary of Engrossed Substitute Bill

- Excludes certain petroleum products from the tax rate of 0.7 percent on the wholesale value applied to hazardous substances subject to the Hazardous Substance Tax (HST), and instead applies an HST rate that begins at $1.09 per barrel in 2019 to those petroleum products.
- Eliminates the three accounts created under the Model Toxics Control Act (MTCA) used to spend HST funds, and instead establishes three new accounts focused on operating budget, capital budget, and stormwater expenditures.

Hearing Date: 4/27/19

Staff: Tracey O'Brien (786-7152).

Background:

Model Toxics Control Act Accounts**.**

The Model Toxics Control Act (MTCA), which is administered and enforced by the Department of Ecology (ECY), requires liable parties to clean up sites contaminated with hazardous substances, and authorizes the ECY to conduct certain pollution prevention activities. Under the MTCA, the State and Local Toxics Control Accounts (STCA and LTCA) were established to provide for activities including hazardous and solid waste planning, contaminated site cleanup grants to local governments, and other activities related to hazardous waste prevention, management, and remediation. In 2013 amendments to the MTCA established a third MTCA Account: the Environmental Legacy Stewardship Account (ELSA).

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.

Funds in each of the three MTCA accounts may be spent on specified state and local environmental, natural resource, and transportation programs. Money in the STCA may be spent on over 20 specified programs, including the following Department of Ecology programs and activities: hazardous waste; contaminated site (MTCA) cleanup; financial assistance for local solid and hazardous waste programs; and oil and hazardous substances spills. Money in the LTCA may be spent on grants or loans to local governments for contaminated site cleanup, stormwater projects, hazardous and solid waste programs, and other local government activities. Money in the ELSA may be used for grants or loans to local governments for certain cleanup programs, for any purposes for which LTCA or STCA uses are authorized, and for certain other uses.

Hazardous Substance Tax.
There is a privilege tax on the first possession of hazardous substances in Washington. Hazardous substances include petroleum products, pesticides, and certain chemicals determined by the ECY to present a threat to human health or the environment if released into the environment.

The Hazardous Substance Tax (HST) is based on the wholesale value of the hazardous product. The tax rate is 0.7 percent. All receipts from the HST are distributed as follows:

- 56 percent of the first $140 million per fiscal year to the STCA;
- 44 percent of the first $140 million per fiscal year to the LTCA; and
- any amount collected over $140 million per fiscal year to the ELSA.

One percent of HST revenues are dedicated to public participation grants to persons potentially affected by hazardous substance releases and nonprofit public interest organizations.

Other.
A number of state environmental laws reference one or more of the MTCA accounts.

The United States Department of Commerce's Bureau of Economic Analysis publishes implicit price deflators that measure inflation based on changes to prices of consumer goods.

Summary of Bill:

Hazardous Substance Tax.
Beginning July 1, 2019, petroleum products that are capable of being easily measured on a per-barrel basis are no longer subject to the 0.7 percent tax rate on the wholesale value of hazardous substances, and are instead subject to a rate of $1.09 per barrel. This $1.09 rate must be annually adjusted by the Department of Revenue (DOR) beginning July 1, 2020, to reflect the percentage change in the implicit price deflator for nonresidential structures published by the United States Department of Commerce's Bureau of Economic Analysis for the most recent calendar year.

The DOR must compile and publish on its website a list of petroleum products that are not easily measured on a per-barrel basis, and which instead remain subject to the 0.7 percent Hazardous Substance Tax (HST) rate on the product's wholesale value. In developing this list, the DOR may accept technical assistance from petroleum product distributors, marketers, and sellers or other outside resources.

The tax on petroleum products identified by the DOR as being easily measured on a per-barrel basis are distributed to three MCTA accounts. However, after the enactment of a transportation funding act which combines new revenues exceeding $2 billion dollars per biennium are deposited into the Motor Vehicle Fund or the multimodal transportation account during the ensuing biennium, the first $50 million dollars of petroleum product HST revenues are distributed to the Motor Vehicle Fund for transportation stormwater activities and projects, prior to any petroleum product HST revenues being distributed to the three MTCA accounts.

One percent of HST revenues remain allocated to public participation grants.

Model Toxic Control Accounts.
The ELSA, STCA, and LTCA Accounts are eliminated, and replaced with three newly-created accounts: The Model Toxics Control Operating Account (Operating account), The Model Toxics Control Capital Account (Capital account), and the Model Toxics Control Stormwater Account (Stormwater account) Expenditures that are currently authorized to be funded from the Environmental Legacy Stewardship Account (ELSA), the State and Local Toxics Control Accounts (STCA and LTCA) are instead authorized to be funded from the Operating, Capital, or Stormwater accounts. Money in the Operating, Capital, and Stormwater accounts may generally only be spent after appropriation.

Operating Account.
The Operating account receives 60 percent of HST revenues from petroleum products that are capable of being measured on a per-barrel basis.

The Operating account may be used for the following activities and programs:
- hazardous waste planning and management;
- solid waste planning and management;
- MTCA hazardous waste cleanup;
- state matching funds under federal cleanup law
- financial assistance for local solid waste, hazardous waste, and related programs;
- state government programs for paint and hazardous waste reduction, recycling, and disposal;
- oil and hazardous material spills;
- water and environmental health protection and monitoring;
- public participation;
- alternative hazardous waste management technology development and demonstration;
- state agriculture and health pesticide programs;
- funding requirements to maintain receipt of federal funds under federal solid waste disposal laws;
- air quality; and
- plastic and expanded polystyrene foam debris cleanup.

Residual balances in the repealed STCA must be transferred to the Operating account.

Capital Account.
The Capital account receives funds from several sources:
- all HST revenues from products other than petroleum products;

- all HST revenues from petroleum products that are not easily measured on a per-barrel basis;
- 25 percent of petroleum product HST revenue.
- remedial action costs recovered under MTCA;
- penalties recovered under MTCA; and
- other funds.

The Capital account may be used for the following purposes:
- the improvement, rehabilitation, remediation, and cleanup of toxic sites and capital-related program and activity expenditures; and
- MTCA capital projects and activities, including financial assistance to local governments and persons for MTCA capital projects and activities.

MTCA capital projects and activities include, generally in descending order of priority:
- remedial actions, including, in generally descending order of priority: extended grant agreements; grants or loans to local governments for MTCA remediation; Department of Ecology (ECY)-conducted remedial actions; grants to persons intending to remediate contaminated property for affordable housing developments; public funding for persons under settlement agreements to pay for remediation costs; public funding for prospective purchasers to clean up certain properties; and funds to expedite multi-party cleanup efforts.
- grants, loans, or contracts to local governments for solid waste plans and programs;
- toxic air pollutant reduction programs, including woodstove and diesel programs;
- grants, loans, or contracts to local governments for hazardous waste plans and programs, including chemical action plan implementation; and
- plastic and expanded polystyrene foam debris cleanup.

Authority for the ECY under LTCA to implement extended grant agreements with local governments for certain remedial actions is retained under the Capital account. Requirements for such extended grant agreements are revised, including requiring local governments to obtain all of the required permits for the action within one year of the effective date of an enacted budget.

Residual balances in the repealed LTCA must be transferred to the Capital account.

<u>The Stormwater Account</u>.
The Stormwater account receives 15 percent of HST revenues from petroleum products that are easily measured on a per-barrel basis. The Stormwater account may be used for operating and capital programs, activities, and projects relating to stormwater, including Operating or Capital account programs related to stormwater, stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent cleanup sites and stormwater financial assistance to local governments.

Residual balances in the repealed ELSA must be transferred to the Stormwater account.

<u>Other</u>.
The Office of Financial Management (OFM) and Legislative Evaluation and Accountability Program (LEAP) Committee, in consultation with legislative fiscal staff, must identify changes to existing budgeting and reporting systems that will improve access to and understanding of

relevant MTCA account-related information when budgets are release by the Legislature or the Governor. Proposed improvements and necessary funding or legislative changes must be identified by September, 2020. Low or no-cost changes must be implemented by OFM and LEAP during the 2019-2021 biennium.

MTCA and non-MTCA statutes that provide for the distribution of penalties or otherwise reference the ELSA, STCA, or LTCA accounts are updated to instead reference the Operating, Capital, or Stormwater accounts. These updates include directing penalties into the Operating account rather than the STCA for violations of the following laws:

- PFAS firefighting foam;
- mercury products;
- the Children's Safe Products Act;
- PBDE flame retardants;
- lead wheel weights;
- motor vehicle brake material;
- Bisphenol-A in consumer products; and
- the use of antifouling vessel paints.

Appropriation: None.

Fiscal Note: Requested on April 26, 2019.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.