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SENATE BILL 5345

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State of Washington

64th Legislature

2015 Regular Session

By Senators Keiser, Conway, Parlette, Ranker, Schoesler, Ericksen, Fraser, and Chase; by request of Department of Ecology

Read first time 01/20/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to annually adjusting the limit on distribution  
2 of hazardous substance tax revenues to the state and local toxics  
3 control accounts to correct for inflation; and reenacting and  
4 amending RCW 70.105D.070.

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

6 **Sec. 1.** RCW 70.105D.070 and 2013 2nd sp.s. c 19 s 7033 and 2013  
7 2nd sp.s. c 4 s 992 are each reenacted and amended to read as  
8 follows:

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

11 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as  
12 follows: Fifty-six percent to the state toxics control account under  
13 subsection (3) of this section and forty-four percent to the local  
14 toxics control account under subsection (4) of this section. When the  
15 cumulative amount of deposits made to the state and local toxics  
16 control accounts under this section reaches the limit during a fiscal  
17 year as established in (b) of this subsection, the remainder of the  
18 moneys collected under RCW 82.21.030 during that fiscal year must be  
19 deposited into the environmental legacy stewardship account created  
20 in RCW 70.105D.170.

1 (b) The limit on distributions of moneys collected under RCW  
2 82.21.030 to the state and local toxics control accounts for the  
3 fiscal year beginning July 1, 2013, is one hundred forty million  
4 dollars. For the fiscal year that begins July 1, 2015, and each  
5 fiscal year thereafter, this limit on distributions of moneys must be  
6 increased by a percentage rate equal to the fiscal growth factor as  
7 defined in RCW 43.135.025(7) and as determined the previous November  
8 for that previous fiscal year by either the state expenditure limit  
9 committee or the attorney general pursuant to RCW 43.135.025(6).

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

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

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

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

25 (c) The hazardous waste clean-up program required under this  
26 chapter;

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

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

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

33 (g) Oil and hazardous materials spill prevention, preparedness,  
34 training, and response activities;

35 (h) Water and environmental health protection and monitoring  
36 programs;

37 (i) Programs authorized under chapter 70.146 RCW;

38 (j) A public participation program;

39 (k) Public funding to assist potentially liable persons to pay  
40 for the costs of remedial action in compliance with clean-up

1 standards under RCW 70.105D.030(2)(e) but only when the amount and  
2 terms of such funding are established under a settlement agreement  
3 under RCW 70.105D.040(4) and when the director has found that the  
4 funding will achieve both: (i) A substantially more expeditious or  
5 enhanced cleanup than would otherwise occur; and (ii) the prevention  
6 or mitigation of unfair economic hardship;

7 (l) Development and demonstration of alternative management  
8 technologies designed to carry out the hazardous waste management  
9 priorities of RCW 70.105.150;

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

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

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

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

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

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

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

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

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

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

38 (t) During the 2013-2015 fiscal biennium, the department of  
39 ecology's water quality, shorelands, environmental assessment,  
40 administration, and air quality programs;

1 (u) During the 2013-2015 fiscal biennium, actions at the state  
2 conservation commission to improve water quality for shellfish;  
3 (~~and~~)

4 (v) During the 2013-2015 fiscal biennium, actions at the  
5 University of Washington for reducing ocean acidification;

6 (w) For the 2013-2015 fiscal biennium, moneys in the state toxics  
7 control account may be spent on projects in section 3159, chapter 19,  
8 Laws of 2013 2nd sp. sess. and for transfer to the local toxics  
9 control account; and

10 (x) For the 2013-2015 fiscal biennium, moneys in the state toxics  
11 control account may be transferred to the radioactive mixed waste  
12 account.

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

16 (i) Extended grant agreements entered into under (~~(e)~~) (e)  
17 (i) of this subsection;

18 (ii) Remedial actions, including planning for adaptive reuse of  
19 properties as provided for under (~~(e)~~) (e)(iv) of this  
20 subsection. The department must prioritize funding of remedial  
21 actions at:

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

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

29 (iii) Storm water pollution source projects that: (A) Work in  
30 conjunction with a remedial action; (B) protect completed remedial  
31 actions against recontamination; or (C) prevent hazardous clean-up  
32 sites;

33 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

34 (v) Solid waste plans and programs under chapters 70.95, 70.95C,  
35 70.95I, and 70.105 RCW;

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

38 (vii) Appropriations to the state toxics control account or the  
39 environmental legacy stewardship account created in RCW 70.105D.170,

1 if the legislature determines that priorities for spending exceed  
2 available funds in those accounts.

3 (b) Funds for plans and programs must be allocated consistent  
4 with the priorities and matching requirements established in chapters  
5 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

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

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

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

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

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

26 (C) The department may not allocate future funding to an extended  
27 grant agreement unless the local government has demonstrated to the  
28 department that funds awarded under the agreement during the previous  
29 biennium have been substantially expended or contracts have been  
30 entered into to substantially expend the funds;

31 (ii) Enter into a grant agreement with a local government  
32 conducting a remedial action that provides for periodic reimbursement  
33 of remedial action costs as they are incurred as established in the  
34 agreement;

35 (iii) Enter into a grant agreement with a local government prior  
36 to it acquiring a property or obtaining necessary access to conduct  
37 remedial actions, provided the agreement is conditioned upon the  
38 local government acquiring the property or obtaining the access in  
39 accordance with a schedule specified in the agreement;

1 (iv) Provide integrated planning grants to local governments to  
2 fund studies necessary to facilitate remedial actions at brownfield  
3 properties and adaptive reuse of properties following remediation.  
4 Eligible activities include, but are not limited to: Environmental  
5 site assessments; remedial investigations; health assessments;  
6 feasibility studies; site planning; community involvement; land use  
7 and regulatory analyses; building and infrastructure assessments;  
8 economic and fiscal analyses; and any environmental analyses under  
9 chapter 43.21C RCW;

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

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

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

20 (B) Funding would create new substantial economic development,  
21 public recreational opportunities, or habitat restoration  
22 opportunities that would not otherwise occur; or

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

26 (vii) When pending grant applications under ~~((e)-(e))~~ (e)(iv)  
27 and (v) of this subsection (4) exceed the amount of funds available,  
28 designated redevelopment opportunity zones must receive priority for  
29 distribution of available funds.

30 ~~((d)-(f))~~ (f) To expedite multiparty clean-up efforts, the  
31 department may purchase remedial action cost-cap insurance. For the  
32 2013-2015 fiscal biennium, moneys in the local toxics control account  
33 may be spent on projects in sections 3024, 3035, 3036, and 3059,  
34 chapter 19, Laws of 2013 2nd sp. sess.

35 (5) Except for unanticipated receipts under RCW 43.79.260 through  
36 43.79.282, moneys in the state and local toxics control accounts may  
37 be spent only after appropriation by statute.

38 (6) No moneys deposited into either the state or local toxics  
39 control account may be used for: Natural disasters where there is no  
40 hazardous substance contamination; high performance buildings; solid

1 waste incinerator facility feasibility studies, construction,  
2 maintenance, or operation; or after January 1, 2010, for projects  
3 designed to address the restoration of Puget Sound, funded in a  
4 competitive grant process, that are in conflict with the action  
5 agenda developed by the Puget Sound partnership under RCW 90.71.310.  
6 However, this subsection does not prevent an appropriation from the  
7 state toxics control account to the department of revenue to enforce  
8 compliance with the hazardous substance tax imposed in chapter 82.21  
9 RCW.

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

22 (8) The department shall adopt rules for grant or loan issuance  
23 and performance. To accelerate both remedial action and economic  
24 recovery, the department may expedite the adoption of rules necessary  
25 to implement chapter 1, Laws of 2013 2nd sp. sess. using the  
26 expedited procedures in RCW 34.05.353. The department shall initiate  
27 the award of financial assistance by August 1, 2013. To ensure the  
28 adoption of rules will not delay financial assistance, the department  
29 may administer the award of financial assistance through interpretive  
30 guidance pending the adoption of rules through July 1, 2014.

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

35 (10) During the 2013-2015 fiscal biennium the local toxics  
36 control account may also be used for the centennial clean water  
37 program and for storm water grants.

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