

# HOUSE BILL REPORT

## SHB 3181

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### As Reported by House Committee On:

Capital Budget  
Finance

**Title:** An act relating to the clean water act of 2010 funding cleanup of water pollution and other programs necessary for the health and well-being of Washington citizens through an increase in the tax on hazardous substances.

**Brief Description:** Concerning the clean water act of 2010 funding cleanup of water pollution and other programs necessary for the health and well-being of Washington citizens through an increase in the tax on hazardous substances.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representatives Ormsby, Hunter, Clibborn, Dunshee, Upthegrove, Rolfes, Wood, Williams, Springer, Dickerson, Lias, Sells, Roberts, Kagi, Cody, Green, Eddy, Nelson, White, Hunt, Orwall, Hudgins, Pettigrew, Darneille, Appleton, Chase, Pedersen, Kenney, Maxwell, Flannigan, Kirby, Carlyle, Goodman, McCoy and Simpson).

### Brief History:

#### Committee Activity:

Capital Budget: 2/17/10, 2/18/10 [DPS];

Finance: 2/26/10, 3/1/10 [DP2S(w/o sub CB)].

#### Brief Summary of Second Substitute Bill

- Increases the 0.7 percent Hazardous Substance Tax (HST) rate by an additional 0.1 percent annually until the additional tax rate is 0.4 percent.
- Allocates most of the additional HST revenues to addressing storm water pollution.

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### HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chase, Jacks, Maxwell, Morrell, Orwall and White.

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*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.*

**Minority Report:** Do not pass. Signed by 7 members: Representatives Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Blake, Hope, McCune and Smith.

**Staff:** Nona Snell (786-7153).

**Background:**

Model Toxics Control Account.

Initiative Measure No. 97, approved by a citizen vote in 1988, created the Model Toxics Control Act, which funds hazardous waste clean-up through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or \$7 per \$1,000. The Department of Ecology's (DOE) Toxic Cleanup Program administers the investigation and clean-up programs.

Federal Clean Water Act.

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA defines "pollutant" broadly to include a variety of materials that may be discharged into water through human activities, construction, industrial processes, or other methods. Among other requirements, the CWA sets effluent limitations for discharges of pollutants to navigable waters and requires states to adopt surface water quality standards to protect humans, fish, and other aquatic life.

State Water Pollution Control.

The CWA authorizes the U. S. Environmental Protection Agency (EPA) to delegate regulatory water pollution authority to designated state agencies. The EPA has delegated this authority to the DOE.

The DOE administers three water quality grant programs:

1. The Water Pollution Control Revolving Fund provides loans for water pollution control facilities and related activities that contribute to achievement of state and federal water pollution control requirements. Funding is provided from the EPA for this program.
2. The Centennial Clean Water Program provides grants and loans for hardship water pollution control facility construction projects and nonpoint source pollution activity projects.
3. The CWA Section 319 Nonpoint Source Program provides grants for nonpoint pollution control activity projects that meet state and federal criteria.

Puget Sound Partnership Action Agenda.

The Puget Sound Partnership's Puget Sound Action Agenda (Action Agenda), which outlines the immediate and long-term actions necessary to restore and protect Puget Sound, was released in 2008. State law includes legislative intent to align state funding with the Action Agenda's policies.

Motor Vehicle Account.

Funds in the Motor Vehicle Account are used by state agencies for the use of counties, cities, and towns' roads, streets, and highway purposes, including facilities for pedestrians, equestrians, or bicyclists.

Puget Sound Recovery Account.

Funds in the Puget Sound Recovery Account are used for the protection and recovery of Puget Sound.

Oil Spill Prevention Account.

Funds in the Oil Spill Prevention Account are used to fund oil spill prevention and preparedness programs.

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**Summary of Substitute Bill:**

Increase in Hazardous Substance Tax.

Beginning May 1, 2010, the Hazardous Substance Tax rate is increased from 0.7 percent to 2.0 percent. The additional taxes are deposited into the Clean Water Legacy Fund created in the bill. The funds are then transferred to the new Storm Water Account, a new Water Quality Action Account, the Oil Spill Prevention Account, the Puget Sound Recovery Account, and the Motor Vehicle Account. A portion of the taxes are also deposited into the State General Fund.

Through June 30, 2011, the additional Hazardous Substance Tax revenues are allocated as follows:

- 20 percent is deposited in the new Storm Water Account;
- 2.45 percent is deposited in the Oil Spill Prevention Account;
- 2.05 percent is deposited in the Puget Sound Recovery Account;
- 2.05 percent is deposited in the new Water Quality Action Account;
- 5 percent is deposited in the Motor Vehicle Account; and
- 68.45 percent is deposited in the State General Fund.

Between July 1, 2011, and July 1, 2013, the additional Hazardous Substance Tax revenues are allocated as follows:

- 20 percent is deposited in the new Storm Water Account;
- 1.8 percent is deposited in the Oil Spill Prevention Account;
- 2.4 percent is deposited in the Puget Sound Recovery Account;
- 2.4 percent is deposited in the new Water Quality Action Account;
- 5 percent is deposited in the Motor Vehicle Account; and
- 68.4 percent is deposited in the State General Fund.

Between July 1, 2013, and July 1, 2015, the additional Hazardous Substance Tax revenues are allocated as follows:

- 45 percent is deposited in the new Storm Water Account;
- 1.8 percent is deposited in the Oil Spill Prevention Account;
- 4.5 percent is deposited in the Puget Sound Recovery Account;
- 4.4 percent is deposited in the new Water Quality Action Account;

- 10 percent is deposited in the Motor Vehicle Account; and
- 34.3 percent is deposited in the State General Fund.

After June 30, 2015, the additional Hazardous Substance Tax revenues are allocated as follows:

- 69.2 percent is deposited in the new Storm Water Account;
- 1.8 percent is deposited in the Oil Spill Prevention Account;
- 9.5 percent is deposited in the Puget Sound Recovery Account;
- 9.5 percent is deposited in the new Water Quality Action Account; and
- 10 percent is deposited in the Motor Vehicle Account.

#### Hazardous Substance Tax Revenue Deposited in the Storm Water Account.

A new Storm Water Account is created in the State Treasury. The DOE is responsible for distributing funds in the account to local governments as grants. Grant monies must be used by local governments in three primary ways:

1. to fund local government projects or activities that mitigate or prevent contamination of storm water or the recontamination of receiving waters previously remediated. Monies allocated for this purpose must be matched by local funds. Generally, 50 percent of the money in the Storm Water Account must be used for these purposes;
2. to fund retrofit programs that address contamination of storm water or projects that reduce toxic diesel emissions and mitigate the air deposition of storm water. Generally, 40 percent of the funds in the Storm Water Account must be used for these purposes; and
3. to fund existing storm water grant programs. Generally, 10 percent of the funds in the Storm Water Account must be used for these purposes.

The DOE must consult with stakeholders in developing criteria for administering the grant programs and ranking projects on their water quality benefits. With respect to projects in the Puget Sound basin, the DOE must consult with the Puget Sound Partnership to ensure that grants are for projects and activities that are consistent with the prioritization of the 2020 Action Agenda. The grant application process must be initiated by July 1, 2010.

By December 1, 2013, and every two years thereafter, the DOE must report to the Governor and the appropriate legislative committees on the progress of the grant programs provided through the Storm Water Account and the suitability of the percentage allocations.

#### Hazardous Substance Tax Revenue Deposited in the Motor Vehicle Account.

Additional hazardous substance tax revenues deposited in the Motor Vehicle Account must be used to fund activities or projects that address contamination of storm water through transportation infrastructure. Revenues may not be used for construction of storm water facilities associated with new road construction.

#### Hazardous Substance Tax Revenue Deposited in the Puget Sound Recovery Account.

Additional hazardous substance tax revenues deposited in the Puget Sound Recovery Account must be used to fund activities or projects that are consistent with the prioritization of the 2020 Action Agenda.

#### Hazardous Substance Tax Revenue Deposited in the State Clean Water Account.

The Water Quality Action Account is created in the State Treasury. The additional hazardous substance tax revenues deposited in the Water Quality Action Account must be used to fund state responsibilities to prevent water pollution, to create and maintain a Storm Water Technology Center to assist businesses and government by developing resources for new clean water practices and technologies, to improve water research and monitoring, to develop clean water guidance and best practices for surface runoff, and to improve source control actions.

Hazardous Substance Tax Revenue Deposited in the Oil Spill Prevention Account.

Additional hazardous substance tax revenues deposited in the Oil Spill Prevention Account are to be used for previously authorized purposes related to oil spill prevention and preparedness programs.

**Substitute Bill Compared to Substitute Bill:**

The intent for the use of the additional tax imposed and deposited into the State General Fund is removed. The date that the additional tax is imposed is changed from July 1, 2010, to May 1, 2010. The additional tax is deposited into the Clean Water Legacy Fund created in the bill for collection, and the funds are then transferred to the six accounts included in the underlying bill, with the following changes:

- collections through 2011: Oil Spill Prevention Account – 2.45 percent (previously 1.9 percent) and a change for the State General Fund;
- collections between July 1, 2011, and June 30, 2013: Storm Water Account – 20 percent (previously 45 percent), Oil Spill Prevention Account – 1.8 percent (previously 1.20 percent), and a change for the State General Fund;
- collections between July 1, 2013, and June 30, 2015: Oil Spill Prevention Account – 1.8 percent (previously 1.1 percent) and a change for the State General Fund; and
- collections after July 1, 2015: Oil Spill Prevention Account – 1.8 percent (previously 1 percent).

The DOE administration costs may be no more than 4 percent of appropriations.

The uses of Storm Water Account grants to local governments is changed by adding projects, for local governments covered by Phase I and Phase II permits, that mitigate or prevent recontamination of receiving waters previously remediated under federal or state approved activities, and retrofit projects that reduce toxic diesel emissions.

The Washington State Department of Transportation (WSDOT) must report biennially, beginning in 2011, to the Governor and the Legislature. The allowance that the WSDOT may deduct 4 percent for administration costs is removed.

The name of the State Clean Water Account is changed to the Water Quality Action Account, and the uses of the Water Quality Action Account are changed by including prevention of pollution in marine receiving waters and removing uses related to oil spills.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on May 1, 2010.

**Staff Summary of Public Testimony:**

(In support) Storm water is a major threat to the Puget Sound. If we do not deal with storm water, we will not be able to rescue Puget Sound. This bill will help to fund an adequate program at the DOE. This bill is an investment in the future of our state, and we need to begin work now. This is a fair way to address this issue.

The bill provides important environmental stewardship and will lead to additional, sustainable jobs.

Local governments are responsible for cleaning up water. If they do not clean up the water, they will have to deal with the liability later. Cities and counties are in a budget crisis and need help to pay for the contaminated water problem. The city rate-payers are not the only people who drive on the roads and create polluted storm water runoff.

Everyone creates polluted runoff when they live their daily lives, and many people are affected by contaminated water and fish. The polluted environment cost money for clean-up and for loss of industry. A healthy environment promotes a healthy economy.

(Opposed) The bill will have a detrimental effect on refineries, which will result in a loss of family-wage jobs that provide good benefits, along with community support. The refineries may move because of the additional cost, and other producers from out-of-state will benefit. The other producers do not necessarily follow our environmental regulations.

The lost community support includes environmental work performed by volunteers who are refinery workers and their families.

The bill creates an unfair tax on businesses to pay for social problems and the State General Fund problem. The tax will be used to backfill the State General Fund.

This tax will also affect agricultural products that farmers will have to pay. Farmers cannot pass the cost onto others.

**Persons Testifying:** (In support) Representative Ormsby, prime sponsor; David Dicks and Martha Kongsgaard, Puget Sound Partnership; Peter Goldmark, Department of Natural Resources; Ted Sturdevant, Department of Ecology; Mo McBroom, Washington Environmental Council; Dave Johnson, Washington State Building and Trades Council; Josh Brown, Kitsap County; Paul Roberts and Dave Williams, Association of Washington Cities; Mary Verner, City of Spokane; Jake Fey, City of Tacoma; Bill Dewey, Taylor Shellfish; Mike Peterson, The Lands Council; Paul Pearce, Skamania County; John McDonald; Bruce Wishart and Janet Way, People for Puget Sound; Douglas Navetski, King County; Daniel Sloan, Sloan Consulting, LLC; Stewart Henderson; and Ezra Eickmeyer, Puget Sound Salmon Enhancement and Harvest Association.

(Opposed) Greg Hanon, Western States Petroleum Association; Don Sorenson, Brett Powers, and Rebecca Spurling, Tesoro; Jeff Pitzer and Nancy Webster, British Petroleum; Larry Pursley, Washington Trucking Associations; Grant Nelson, Association of Washington Business; Tim Hamilton, Auto Gasoline Dealers; Dan Coyne, Alaska Airlines; James F. Fitzgerald, Far West Agribusiness Association; Heather Hansen, Washington Friends of Farms and Forests; Brad Tower, Northwest Grocery Association; and Charlie Brown, Washington Oil Marketers Association.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Capital Budget. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

**Staff:** Jeffrey Mitchell (786-7139).

### **Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Capital Budget:**

#### Increase in Hazardous Substance Tax.

The Finance Committee revised the amount of the increase and distribution of the Hazardous Substance Tax. Beginning May 1, 2010, and each July for the following three years, the Hazardous Substance Tax rate is increased by an additional 0.1 percent until the additional tax rate is 0.4 percent. The additional taxes are deposited as follows: 84 percent in a new Storm Water Account; 10 percent in the Motor Vehicle Account; 4 percent in the Puget Sound Recovery Account; and 2 percent in the Oil Spill Prevention Account. There is no distribution of revenue to the State General Fund or to a new Water Quality Action Account.

#### Hazardous Substance Tax Export Credit.

An export credit is provided for the additional tax for petroleum products exported from the state.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill contains an emergency clause and takes effect on May 1, 2010.

**Staff Summary of Public Testimony:**

(In support) The state is grappling with big issues and problems related to storm water pollution. There was strong support when the tax was first adopted by the people by initiative in the late 1980s. Local governments are charged with cleaning up storm water contamination required under federal law. Concerns about jobs are legitimate but this is an issue that can be looked into and we are waiting for alternate proposals. However, this money will create jobs and the increase in gas prices will be indiscernible. This bill would be a mechanism that allows the state to assist local governments with their storm water responsibilities. This bill is important to the Governor for two reasons: First, it addresses the storm water pollution problem and second, it addresses the General Fund problem. There is no perfect tax, but this bill addresses our needs and will be part of the budget and storm water solution. The Department of Natural Resources manages a considerable amount of state lands that are recipients of storm water pollution. This pollution can have big impact on aquatic systems. The increase in roads, homes, etc., has delivered considerably more polluted storm water to our waterways. As the state population has increased, the amount of hazardous substances, such as pesticides, deposited into the environment has gone up. This bill addresses the state's overall financial conditions as well as the storm water pollution issue. The hazardous substance tax applies to the major products that get into our waterways so it's an appropriate tax for storm water pollution. Two years ago, the Puget Sound Partnership (PSP) was created. The PSP has ranked priorities for the 2020 action agenda. Addressing storm water pollution is a very high priority. Eighty-five percent of pollution comes from non-point sources in the form of runoff. Eight million pounds of toxic chemicals go into the Puget Sound every year. This bill is about jobs, clean water, and fiscal relief for local governments. The \$81 million in the Model Toxics Control Account is needed for toxic site clean-up. The oil companies used the same arguments about going out of business before and it never happened. This bill would create jobs in the construction industry. Some construction workers have been out of work for over a year. Puget Sound did not create the storm water pollution problem, people did, and we need to take responsibility to fix the problem. One hundred cities are required to address storm water pollution. Cities have raised \$250 million per year to address storm water pollution but these jurisdictions need assistance. Fifty-six percent of the population lives in cities. There is a certain amount of time needed to get started with respect to these projects, so we are okay with the initial diversion to the General Fund.

(Opposed) The refining industry is in crisis. Tesoro owns no crude. It buys everything from third parties. We profit only if we can pass the cost on to consumers. Tesoro reported a loss of \$140 million. The Anacortes refinery is the most challenged. This one facility has lost over \$250 million over several years. This is a gas tax. Forty percent of product is sent outside the state, where we can't increase our prices to reflect a tax increase because of competitive pressures. This bill is about real people with real jobs and this bill would cost the state jobs. The average salary in the refining industry is \$140,000 a year. Refinery jobs are good wage jobs. Refinery employees put a lot of money back into communities. These employees are also concerned about the environment. Refiners put a lot of money into environmental projects. A lot of jobs are at risk. We are not here to work against the environment, jobs, education, etc., but we need to spread the tax burden more equitably. In a way, our critical habitat is being threatened – that is we need a manufacturing economy to thrive. This bill will increase gas prices by 6 cents at the pump, not 3 cents. There are 18th Amendment concerns that this money is not being used for transportation related purposes as required by the state Constitution. There is \$81 million dollars in the Model Toxics Control

Account that could be used for the purposes of this bill without increasing taxes. Some communities that rely heavily on propane have high unemployment and will be negatively impacted by the bill. Nobody is opposed to clean water, but people are opposed to an unfair tax. Farmers will be negatively impacted because they use a lot of propane. Natural gas is not subject to hazardous substance tax but propane is subject to the tax, but propane is non-toxic. Propane produces 20 percent less in greenhouse gases. Small business continues to take it in the shorts. In our industry, if the cost of business becomes too high, we have to shut down completely; there is no in between. This bill is not about storm water, it is about a spending problem. Tax increases to address storm water pollution, which is primarily caused by impervious surfaces, should not be shouldered by the agricultural industry.

**Persons Testifying:** (In support) Representative Ormsby, prime sponsor; Julie Murray, Office of the Governor; Peter Goldmark, Department of Natural Resources; Ted Sturdevant, Department of Ecology; David Dicks and Martha Kongsgaard, Puget Sound Partnership; Mo McBroom, Washington Environmental Council; Randy Scott, Washington State Association of Plumbers and Pipefitters; Dave Williams, Association of Washington Cities; Lonnie Johns-Brown, League of Women Voters; Dave Johnson, Washington State Building and Construction Trades Council; Doug Levy, City of Federal Way and City of Puyallup; Dick Little, City of Bellingham; Scott Merriman, Washington Association of Counties; Bruce Wishart, People for Puget Sound; and Cody Arledge, Sheet Metal Workers Local 66.

(Opposed) Lynn Westfall and Steve Gary, Tesoro; Joe Solomon, United Steel Workers Local 12-591; Tim Hamilton, Auto; Greg Hanon, Western States Petroleum Association; James Curry, Northwest Propane Gas Association; Danny Willard, Bowman Propane Company; Bert Turn, Northern Energy Propane; Derrick Grice, Ferrellgas; John Weigel, Pacific Energy Group; Rachele Honeycutt, United Steel Workers Local 12-590; Cary Clemenson, BP; Dan Coyne, Alaska Airlines; Ben Buckholz, Far West Agribusiness Association; and Amber Carter, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** (In support) Nicole Reese; Rein Atteman; Jamie Wine; Roxy Giddings; Bill Giddings; Beth Wison, West Sound Conservation Council; and Stew Henderson.

(Opposed) Larry Pursley, Washington Trucking Association; Brad Tower, Northwest Grocers Association; Seth Murphy, Ferrell Gas; Scott Dahlma, Washington Farm Bureau; and Charlie Brown, Washington Oil Marketers Association.