

CERTIFICATION OF ENROLLMENT

THIRD ENGROSSED SUBSTITUTE SENATE BILL 5034

Chapter 4, Laws of 2013

(partial veto)

63rd Legislature
2013 2nd Special Session

OPERATING BUDGET

Provisions changing the Model Toxics Control Act

EFFECTIVE DATE: 06/30/13 - Except Section 952, which becomes effective 08/01/13, Sections 978 and 996, which become effective 07/28/13, and Sections 991 and 992, which become effective 07/01/13.

Passed by the Senate June 28, 2013
YEAS 44 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House June 28, 2013
YEAS 81 NAYS 11

FRANK CHOPP

Speaker of the House of Representatives

Approved June 30, 2013, 4:20 p.m., with the exception of sections 103(10); 103(11); 114(3); 124(2); 124(3); 124(4); 124(5); 130(5); 148(4); 150 page 37, lines 33-36 and page 38, lines 1-7; 205(1)(e); 208(7); 213(35); 213(36); 217(5); 219(25); 302(8); 307(15); 501(1)(a)(v); 610(1); 610(2); 610(8); 981, which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **THIRD ENGROSSED SUBSTITUTE SENATE BILL 5034** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

July 1, 2013

**Secretary of State
State of Washington**

1 criminal defense bar appointed by the county legislative authority,
2 and, in counties with a drug court, a representative of the drug court
3 shall jointly submit a plan, approved by the county legislative
4 authority or authorities, to the panel established in subsection (5)(b)
5 of this section, for disposition of all the funds provided from the
6 criminal justice treatment account within that county. The funds shall
7 be used solely to provide approved alcohol and substance abuse
8 treatment pursuant to RCW 70.96A.090, treatment support services, and
9 for the administrative and overhead costs associated with the operation
10 of a drug court.

11 (a) No more than ten percent of the total moneys received under
12 subsections (4) and (5) of this section by a county or group of
13 counties participating in a regional agreement shall be spent on the
14 administrative and overhead costs associated with the operation of a
15 drug court.

16 (b) No more than ten percent of the total moneys received under
17 subsections (4) and (5) of this section by a county or group of
18 counties participating in a regional agreement shall be spent for
19 treatment support services.

20 (7) Counties are encouraged to consider regional agreements and
21 submit regional plans for the efficient delivery of treatment under
22 this section.

23 (8) Moneys allocated under this section shall be used to
24 supplement, not supplant, other federal, state, and local funds used
25 for substance abuse treatment.

26 (9) Counties must meet the criteria established in RCW
27 2.28.170(3)(b).

28 (10) The authority under this section to use funds from the
29 criminal justice treatment account for the administrative and overhead
30 costs associated with the operation of a drug court expires June 30,
31 ((2013)) 2015.

32 **Sec. 991.** RCW 70.105D.--- and 2013 2nd sp.s. c 1 s 10 are each
33 amended to read as follows:

34 (1) The environmental legacy stewardship account is created in the
35 state treasury. Beginning July 1, 2013, and every fiscal year
36 thereafter, the annual amount received from the tax imposed by RCW
37 82.21.030 that exceeds one hundred forty million dollars must be

1 deposited into the environmental legacy stewardship account. The state
2 treasurer may make periodic deposits into the environmental legacy
3 stewardship account based on forecasted revenue. Moneys in the account
4 may only be spent after appropriation.

5 (2) Moneys in the environmental legacy stewardship account may be
6 spent on performance and outcome based projects, model remedies,
7 demonstrated technologies, procedures, contracts, and project
8 management and oversight that result in significant reductions in the
9 time to complete compared to baseline averages for:

10 (a) Purposes authorized under RCW 70.105D.070 (3) and (4);

11 (b) Storm water low-impact retrofit projects and other projects
12 with significant environmental benefits that reduce storm water
13 pollution from existing infrastructure and development;

14 (c) Cleanup and disposal of hazardous substances from abandoned or
15 derelict vessels, defined for the purposes of this section as vessels
16 that have little or no value and either have no identified owner or
17 have an identified owner lacking financial resources to clean up and
18 dispose of the vessel, that pose a threat to human health or the
19 environment; and

20 (d) Appropriations to the state and local toxics control accounts
21 created in RCW 70.105D.070 if the legislature determines that
22 priorities for spending exceed available funds in those accounts.

23 (3) Except as provided under RCW 70.105D.070(3) (k) and (q),
24 nothing in chapter 1, Laws of 2013 2nd sp. sess. expands the ability of
25 a potentially liable person to receive public funding.

26 (4) Moneys in the environmental legacy stewardship account may also
27 be used as follows:

28 (a) During the 2013-2015 fiscal biennia, shoreline update technical
29 assistance and for local government shoreline master program update
30 grants;

31 (b) During the 2013-2015 fiscal biennium, solid and hazardous waste
32 compliance at the department of corrections;

33 (c) During the 2013-2015 fiscal biennium, activities at the
34 department of fish and wildlife concerning water quality monitoring,
35 hatchery water quality regulatory compliance, and technical assistance
36 to local governments on growth management and shoreline management;

37 (d) During the 2013-2015 fiscal biennium, forest practices

1 regulation and aquatic land investigation and cleanup activities at the
2 department of natural resources.

3 **Sec. 992.** RCW 70.105D.070 and 2013 2nd sp.s. c 1 s 9 are each
4 amended to read as follows:

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

7 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as
8 follows: Fifty-six percent to the state toxics control account under
9 subsection (3) of this section and forty-four percent to the local
10 toxics control account under subsection (4) of this section. When the
11 cumulative amount of deposits made to the state and local toxics
12 control accounts under this section reaches the limit during a fiscal
13 year as established in (b) of this subsection, the remainder of the
14 moneys collected under RCW 82.21.030 during that fiscal year must be
15 deposited into the environmental legacy stewardship account created in
16 RCW 70.105D.--- (section 10, chapter 1, Laws of 2013 2nd sp. sess.).

17 (b) The limit on distributions of moneys collected under RCW
18 82.21.030 to the state and local toxics control accounts for the fiscal
19 year beginning July 1, 2013, is one hundred forty million dollars.

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

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

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

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

35 (c) The hazardous waste clean-up program required under this
36 chapter;

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

- 1 (e) Financial assistance for local programs in accordance with
2 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- 3 (f) State government programs for the safe reduction, recycling, or
4 disposal of paint and hazardous wastes from households, small
5 businesses, and agriculture;
- 6 (g) Oil and hazardous materials spill prevention, preparedness,
7 training, and response activities;
- 8 (h) Water and environmental health protection and monitoring
9 programs;
- 10 (i) Programs authorized under chapter 70.146 RCW;
- 11 (j) A public participation program;
- 12 (k) Public funding to assist potentially liable persons to pay for
13 the costs of remedial action in compliance with clean-up standards
14 under RCW 70.105D.030(2)(e) but only when the amount and terms of such
15 funding are established under a settlement agreement under RCW
16 70.105D.040(4) and when the director has found that the funding will
17 achieve both: (i) A substantially more expeditious or enhanced cleanup
18 than would otherwise occur; and (ii) the prevention or mitigation of
19 unfair economic hardship;
- 20 (l) Development and demonstration of alternative management
21 technologies designed to carry out the hazardous waste management
22 priorities of RCW 70.105.150;
- 23 (m) State agriculture and health programs for the safe use,
24 reduction, recycling, or disposal of pesticides;
- 25 (n) Storm water pollution control projects and activities that
26 protect or preserve existing remedial actions or prevent hazardous
27 clean-up sites;
- 28 (o) Funding requirements to maintain receipt of federal funds under
29 the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);
- 30 (p) Air quality programs and actions for reducing public exposure
31 to toxic air pollution;
- 32 (q) Public funding to assist prospective purchasers to pay for the
33 costs of remedial action in compliance with clean-up standards under
34 RCW 70.105D.030(2)(e) if:
- 35 (i) The facility is located within a redevelopment opportunity zone
36 designated under RCW 70.105D.--- (section 4, chapter 1, Laws of 2013
37 2nd sp. sess.);

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

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

8 (r) Petroleum-based plastic or expanded polystyrene foam debris
9 cleanup activities in fresh or marine waters; (~~and~~)

10 (s) Appropriations to the local toxics control account or the
11 environmental legacy stewardship account created in RCW 70.105D.---
12 (section 10, chapter 1, Laws of 2013 2nd sp. sess.), if the legislature
13 determines that priorities for spending exceed available funds in those
14 accounts(~~(-)~~);

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

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

20 (v) During the 2013-2015 fiscal biennium, actions at the University
21 of Washington for reducing ocean acidification.

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

25 (i) Extended grant agreements entered into under (c)(i) of this
26 subsection;

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

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

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

37 (iii) Storm water pollution source projects that: (A) Work in

1 conjunction with a remedial action; (B) protect completed remedial
2 actions against recontamination; or (C) prevent hazardous clean-up
3 sites;

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

5 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
6 70.95I, and 70.105 RCW;

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

9 (vii) Appropriations to the state toxics control account or the
10 environmental legacy stewardship account created in RCW 70.105D.---
11 (section 10, chapter 1, Laws of 2013 2nd sp. sess.), if the legislature
12 determines that priorities for spending exceed available funds in those
13 accounts.

14 (b) Funds for plans and programs must be allocated consistent with
15 the priorities and matching requirements established in chapters
16 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

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

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

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

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

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

37 (C) The department may not allocate future funding to an extended
38 grant agreement unless the local government has demonstrated to the

1 department that funds awarded under the agreement during the previous
2 biennium have been substantially expended or contracts have been
3 entered into to substantially expend the funds;

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

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

13 (iv) Provide integrated planning grants to local governments to
14 fund studies necessary to facilitate remedial actions at brownfield
15 properties and adaptive reuse of properties following remediation.
16 Eligible activities include, but are not limited to: Environmental
17 site assessments; remedial investigations; health assessments;
18 feasibility studies; site planning; community involvement; land use and
19 regulatory analyses; building and infrastructure assessments; economic
20 and fiscal analyses; and any environmental analyses under chapter
21 43.21C RCW;

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

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

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

32 (B) Funding would create new substantial economic development,
33 public recreational opportunities, or habitat restoration opportunities
34 that would not otherwise occur; or

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

1 (vii) When pending grant applications under (c)(iv) and (v) of this
2 subsection (4) exceed the amount of funds available, designated
3 redevelopment opportunity zones must receive priority for distribution
4 of available funds.

5 (d) To expedite multiparty clean-up efforts, the department may
6 purchase remedial action cost-cap insurance.

7 (5) Except for unanticipated receipts under RCW 43.79.260 through
8 43.79.282, moneys in the state and local toxics control accounts may be
9 spent only after appropriation by statute.

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

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

33 (8) The department shall adopt rules for grant or loan issuance and
34 performance. To accelerate both remedial action and economic recovery,
35 the department may expedite the adoption of rules necessary to
36 implement chapter 1, Laws of 2013 2nd sp. sess. using the expedited
37 procedures in RCW 34.05.353. The department shall initiate the award
38 of financial assistance by August 1, 2013. To ensure the adoption of

1 rules will not delay financial assistance, the department may
2 administer the award of financial assistance through interpretive
3 guidance pending the adoption of rules through July 1, 2014.

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

7 **Sec. 993.** RCW 70.148.020 and 2012 1st sp.s. c 3 s 1 are each
8 amended to read as follows:

9 (1) The pollution liability insurance program trust account is
10 established in the custody of the state treasurer. All funds
11 appropriated for this chapter and all premiums collected for
12 reinsurance shall be deposited in the account. Expenditures from the
13 account shall be used exclusively for the purposes of this chapter
14 including payment of costs of administering the pollution liability
15 insurance and underground storage tank community assistance programs.
16 Expenditures for payment of administrative and operating costs of the
17 agency are subject to the allotment procedures under chapter 43.88 RCW
18 and may be made only after appropriation by statute. No appropriation
19 is required for other expenditures from the account.

20 (2) Each calendar quarter, the director shall report to the
21 insurance commissioner the loss and surplus reserves required for the
22 calendar quarter. The director shall notify the department of revenue
23 of this amount by the fifteenth day of each calendar quarter.

24 (3) Each calendar quarter the director shall determine the amount
25 of reserves necessary to fund commitments made to provide financial
26 assistance under RCW 70.148.130 to the extent that the financial
27 assistance reserves do not jeopardize the operations and liabilities of
28 the pollution liability insurance program. The director shall notify
29 the department of revenue of this amount by the fifteenth day of each
30 calendar quarter. The director may immediately establish an initial
31 financial assistance reserve of five million dollars from available
32 revenues. The director may not expend more than fifteen million
33 dollars for the financial assistance program.

34 ~~((4))~~ (4) During the 2013-2015 fiscal biennium, the legislature
35 may transfer from the pollution liability insurance program trust
36 account to the state general fund such amounts as reflect the excess
37 fund balance of the account.