

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5035

Chapter 19, Laws of 2013
(partial veto)
63rd Legislature
2013 2nd Special Session

CAPITAL BUDGET

Provisions amending the Model Toxics Control Act

EFFECTIVE DATE: 07/01/13

Passed by the Senate June 29, 2013
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House June 29, 2013
YEAS 79 NAYS 4

FRANK CHOPP

Speaker of the House of Representatives

Approved July 1, 2013, 1:37 p.m., with
the exception of 5020(3), which is 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 **ENGROSSED SUBSTITUTE SENATE BILL 5035** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

July 2, 2013

**Secretary of State
State of Washington**

1 NEW SECTION. **Sec. 7007.** (1) It is expected that projects be ready
2 to proceed in a timely manner depending on the type or phase of the
3 project or program that is the subject of the appropriation in this
4 act. Except for major projects that customarily may take more than two
5 biennia to complete from predesign to the end of construction, or large
6 infrastructure grant or loan programs supporting projects that often
7 take more than two biennia to complete, the legislature generally does
8 not intend to reappropriate funds more than once, particularly for
9 smaller grant programs, local/community projects, and minor works.

10 (2) Agencies shall expedite the expenditure of reappropriations and
11 appropriations in this act in order to: (a) Rehabilitate
12 infrastructure resources; (b) accelerate environmental rehabilitation
13 and restoration projects for the improvement of the state's natural
14 environment; (c) reduce additional costs associated with acquisition
15 and construction inflationary pressures; and (d) provide additional
16 employment opportunities associated with capital expenditures.

17 (3) To the extent feasible, agencies are directed to accelerate
18 expenditure rates at their current level of permanent employees and
19 shall use contracted design and construction services wherever
20 necessary to meet the goals of this section.

21 NEW SECTION. **Sec. 7008.** The office of financial management, in
22 accordance with RCW 28B.77.070 and 43.88D.010, shall include the
23 following in the scoring process: (1) The office of financial
24 management shall develop a single prioritized list that includes all
25 projects requesting funding, with the exception of minor works and
26 predesign requests. Predesigns shall be on a separate prioritized
27 list; (2) the office of financial management shall increase the
28 weighting of the reasonableness of cost criteria; (3) projects shall be
29 scored only once unless the office of financial management, or the
30 requesting school, find that the project scope or budget has
31 significantly changed.

32 **NEW SECTION. Sec. 7009. FOR THE OFFICE OF FINANCIAL MANAGEMENT**

33 State Toxic Control and Environmental Legacy Stewardship Accounts
34 Budgeting

35 The office of financial management, working with the department of
36 ecology and legislative fiscal committee staff, shall develop a process

1 and procedures for the budgeting of the state toxics control account
2 and the environmental legacy stewardship account to ensure adequate
3 funding for the base operating programs as specified in RCW 70.105D.070
4 (3) is maintained. This includes recommendations on how the base
5 operating budget work will be assigned to the two accounts, and, if
6 future shifts between the two accounts are necessary to maintain
7 existing funding levels, procedures that describe when they are to be
8 addressed through maintenance level or policy level decision packages.
9 These procedures shall be submitted to the legislative fiscal and
10 environmental committees by October 1, 2013.

11 NEW SECTION. **Sec. 7010.** State agencies, including institutions of
12 higher education, shall allot and report full-time equivalent staff for
13 capital projects in a manner comparable to staff reporting for
14 operating expenditures.

15 NEW SECTION. **Sec. 7011.** Executive Order No. 05-05, archaeological
16 and cultural resources, was issued effective November 10, 2005.
17 Agencies and higher education institutions shall comply with the
18 requirements set forth in this executive order.

19 NEW SECTION. **Sec. 7012. FOR THE STATE TREASURER--TRANSFERS**
20 Thurston County Capital Facilities Account: For transfer to the
21 Capitol Building Construction Account \$3,200,000

22 NEW SECTION. **Sec. 7013. FOR THE STATE TREASURER--TRANSFERS**
23 State Toxic Control Account: For transfer to the
24 Radioactive Mixed Waste Account \$2,000,000
25 State Toxic Control Account: For transfer to the
26 Local Toxic Control Account \$4,000,000
27 Environmental Legacy Stewardship Account: For
28 transfer to the Local Toxic Control Account \$12,000,000

29 NEW SECTION. **Sec. 7014. ACQUISITION OF PROPERTIES AND FACILITIES**
30 **THROUGH FINANCIAL CONTRACTS.** The following agencies may enter into
31 financial contracts, paid from any funds of an agency, appropriated or
32 nonappropriated, for the purposes indicated and in not more than the
33 principal amounts indicated, plus financing expenses and required

1 extended repayment periods, or forgivable principal loans for projects
2 that meet financial hardship criteria as measured by the affordability
3 index or similar standard measure of financial hardship.

4 (c) By December 1, 2013, the board must recommend to the
5 appropriate committees of the legislature statutory language to make
6 permanent these new criteria, procedures, and financing policies.

7 **Sec. 7033.** RCW 70.105D.070 and 2013 2nd sp.s. c 1 s 9 are each
8 amended to read as 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 in
20 RCW 70.105D.--- (section 10, chapter 1, Laws of 2013 2nd sp. sess.).

21 (b) The limit on distributions of moneys collected under RCW
22 82.21.030 to the state and local toxics control accounts for the fiscal
23 year beginning July 1, 2013, is one hundred forty million dollars.

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

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

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

36 (b) The state's responsibility for solid waste planning,

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

1 costs of remedial action in compliance with clean-up standards under
2 RCW 70.105D.030(2)(e) if:

3 (i) The facility is located within a redevelopment opportunity zone
4 designated under RCW 70.105D.--- (section 4, chapter 1, Laws of 2013
5 2nd sp. sess.);

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

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

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

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

20 (t) For the 2013-2015 fiscal biennium, moneys in the state toxics
21 control account may be spent on projects in section 3159 of this act
22 and for transfer to the local toxics control account; and

23 (u) For the 2013-2015 fiscal biennium, moneys in the state toxics
24 control account may be transferred to the radioactive mixed waste
25 account.

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

29 (i) Extended grant agreements entered into under (c)(i) of this
30 subsection;

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

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

37 (B) Brownfield properties within a redevelopment opportunity zone

1 if the local government is a prospective purchaser of the property and
2 there is a department-approved remedial action work plan or equivalent
3 document under the federal cleanup law;

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

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

9 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
10 70.95I, and 70.105 RCW;

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

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

18 (b) Funds for plans and programs must be allocated consistent with
19 the priorities and matching requirements established in chapters
20 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

24 (i) Enter into an extended grant agreement with a local government
25 conducting remedial actions at a facility where those actions extend
26 over multiple biennia and the total eligible cost of those actions
27 exceeds twenty million dollars. The agreement is subject to the
28 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 at
32 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

1 biennium have been substantially expended or contracts have been
2 entered into to substantially expend the funds;

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

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

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

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

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

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

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

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

37 (vii) When pending grant applications under (c)(iv) and (v) of this

1 subsection (4) exceed the amount of funds available, designated
2 redevelopment opportunity zones must receive priority for distribution
3 of available funds.

4 (d) To expedite multiparty clean-up efforts, the department may
5 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal
6 biennium, moneys in the local toxics control account may be spent on
7 projects in sections 3024, 3035, 3036, and 3059 of this act.

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

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

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

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

1 of financial assistance by August 1, 2013. To ensure the adoption of
2 rules will not delay financial assistance, the department may
3 administer the award of financial assistance through interpretive
4 guidance pending the adoption of rules through July 1, 2014.

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

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

11 **Sec. 7034.** RCW 79.17.010 and 2012 2nd sp.s. c 2 s 6006 are each
12 amended to read as follows:

13 (1) The department, with the approval of the board, may exchange
14 any state land and any timber thereon for any land of equal value in
15 order to:

16 (a) Facilitate the marketing of forest products of state lands;

17 (b) Consolidate and block-up state lands;

18 (c) Acquire lands having commercial recreational leasing potential;

19 (d) Acquire county-owned lands;

20 (e) Acquire urban property which has greater income potential or
21 which could be more efficiently managed by the department in exchange
22 for state urban lands as defined in RCW 79.19.100; or

23 (f) Acquire any other lands when such exchange is determined by the
24 board to be in the best interest of the trust for which the state land
25 is held.

26 (2) Land exchanged under this section shall not be used to reduce
27 the publicly owned forest land base.

28 (3) The board shall determine that each land exchange is in the
29 best interest of the trust for which the land is held prior to
30 authorizing the land exchange.

31 (4)(a) During the biennium ending June 30, 2013, for the purposes
32 of maintaining working farm and forest landscapes or acquiring natural
33 resource lands at risk of development, the department, with approval of
34 the board of natural resources, may exchange any state land and any
35 timber thereon for any land and proceeds of equal value, when it can be
36 demonstrated that the trust fiduciary obligations can be better
37 fulfilled after an exchange is completed. Proceeds may be in the form

1 (1) The legislature finds that the department has a need to
2 maintain the real property asset base it manages and needs an
3 accounting mechanism to complete transactions without reducing the real
4 property asset base.

5 (2) The natural resources real property replacement account is
6 created in the state treasury. This account shall consist of funds
7 transferred or paid for the disposal or transfer of real property by
8 the department under RCW 79.17.200 and the transfer of state lands or
9 state forest lands into community forest trust lands under RCW
10 79.155.040. The funds in this account shall be used solely for the
11 acquisition of replacement real property and may be spent only when,
12 and as, authorized by legislative appropriation. During the 2013-2015
13 fiscal biennium, funds in the account may also be appropriated for the
14 land purchase in section . . . of this act under the provisions of
15 section . . . and Second Substitute Senate Bill No. 5367.

16 **Sec. 7042.** RCW 70.105D.--- and 2013 2nd sp.s. c 1 s 10 are each
17 amended to read as follows:

18 (1) The environmental legacy stewardship account is created in the
19 state treasury. Beginning July 1, 2013, and every fiscal year
20 thereafter, the annual amount received from the tax imposed by RCW
21 82.21.030 that exceeds one hundred forty million dollars must be
22 deposited into the environmental legacy stewardship account. The state
23 treasurer may make periodic deposits into the environmental legacy
24 stewardship account based on forecasted revenue. Moneys in the account
25 may only be spent after appropriation.

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

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

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

35 (c) Cleanup and disposal of hazardous substances from abandoned or
36 derelict vessels, defined for the purposes of this section as vessels
37 that have little or no value and either have no identified owner or

1 have an identified owner lacking financial resources to clean up and
2 dispose of the vessel, that pose a threat to human health or the
3 environment; and

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

7 (3) Except as provided under RCW 70.105D.070(3) (k) and (q),
8 nothing in this act expands the ability of a potentially liable person
9 to receive public funding.

10 (4) For the 2013-2015 fiscal biennium, moneys in the environmental
11 legacy stewardship account may be transferred to the local toxics
12 control account.

13 **NEW SECTION. Sec. 7043. FOR THE STATE TREASURER--TRANSFERS**

14 State Toxic Control Account: For transfer to

15 the Local Toxic Control Account	\$4,000,000
16 Environmental Legacy Stewardship Account: For transfer to	
17 the Local Toxic Control Account	\$12,000,000

18 NEW SECTION. Sec. 7044. This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately.

(End of bill)