

SB 1561 A STAFF MEASURE SUMMARY

Senate Committee On Natural Resources and Wildfire

Action Date: 02/13/24

Action: Do pass with amendments. Refer to Ways and Means by prior reference. (Printed A-Eng).

Vote: 5-0-0-0

Yeas: 5 - Girod, Golden, Prozanski, Smith DB, Taylor

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

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Meeting Dates: 2/8, 2/13

WHAT THE MEASURE DOES:

The measure establishes the Environmental Restoration Council (Council) and several funds to invest and distribute money from the Monsanto Settlement Agreement. The money is intended to supplement efforts by recognized tribal governments, executive branch agencies, and disproportionately impacted communities for environmental remediation or restitutionary projects or purposes.

Detailed Summary:

Section 1: Legislative Intent

Describes the legislative intent of this Act, including: establishing the Oregon Environmental Restoration Fund to receive Monsanto Settlement Agreement money; providing for the investment of settlement funds and expenditure of earnings in an equitable, transparent, and accountable manner; and ensuring that, consistent with the terms of the Monsanto Settlement Agreement, earnings are used to supplement efforts by recognized tribal governments, executive branch agencies, and disproportionately impacted communities for environmental remediation or restitutionary projects or purposes having a nexus with environmental harms to air, water, soil, other natural resources, or human health caused by environmental contamination, particularly the presence of polychlorinated biphenyls (PCB).

Section 2: Definitions

Defines "disproportionately impacted community" and "Monsanto Settlement Agreement."

Section 3: Oregon Environmental Restoration Fund Establishment

Establishes the Oregon Environmental Restoration Fund. Requires that money be continuously appropriated to the Oregon Watershed Enhancement Board (OWEB) for distribution as well as for OWEB and Council administrative expenses, consistent with the terms of the Monsanto Settlement Agreement. Specifies that OWEB will administer the fund, and that the State Treasurer will provide accounting services for the fund.

Section 4: Distributions

Directs the Council, based on the advice of the State Treasurer, to establish a long-term distribution policy for the Oregon Environmental Restoration Fund that seeks to maintain a stable real asset value over time while providing for the transfers in this Act. Requires the Council to annually determine the amounts that will be transferred to OWEB. Directs OWEB to subtract reasonable administrative expenses for OWEB and the Council, not to exceed 0.25 percent of the fund balance at the end of the prior fiscal year, unless a greater amount is approved by the Council. Directs OWEB to then transfer the remainder of the amount determined pursuant to the long-term distribution policy such that 50 percent is transferred to the State Agency Program Fund, 25 percent is transferred to the Disproportionately Impacted Community Fund, and 25 percent is transferred to the Tribal Nation Natural Resource Program Fund.

SB 1561 A STAFF MEASURE SUMMARY

Section 5: Environmental Restoration Council Establishment

Establishes the Council within OWEB. Specifies Council membership and governance terms. Requires the Council submit a biennial report to the Governor and Legislative Assembly that describes the purposes for which funds were used and the outcomes achieved by funding recipients.

Section 6: State Agency Program Fund - Allocation Procedures and Criteria

Directs the Council to establish by rule procedures and criteria for approving allocations from the State Agency Program Fund to state agencies. Specifies that approved allocations must be for projects or purposes that are consistent with the terms of the Monsanto Settlement Agreement and the strategic priorities established under Section 9 of this Act. Specifies additional allocation, rule, and reporting requirements.

Section 7: Disproportionately Impacted Community Fund - Nonprofit Grant Program

Directs the Council to establish by rule a grant program paid out of the Disproportionately Impacted Community Fund for nonprofit entities to carry out projects or purposes that are consistent with the terms of the Monsanto Settlement Agreement and the strategic priorities established under Section 9 of this Act. Specifies that projects must benefit disproportionately impacted communities. Specifies additional grant award, rule, and reporting requirements.

Section 8: Tribal Nation Natural Resources Fund

Directs the Council to establish by rule procedures for the biennial transfer of money from the Tribal Nation Natural Resource Program Fund to federally recognized Indian Tribes. Specifies that transfers must be for projects or purposes that are consistent with the terms of the Monsanto Settlement Agreement. Requires that transfers be made in equal amounts to each of the nine federally recognized Indian tribes in Oregon unless a different proportion is provided for by the Council, consistent with recommendations of the Commission on Indian Services. Specifies additional transfer, rule, and reporting requirements.

Section 9: Strategic Priorities for Expenditures

Directs the Council, in consultation with certain state agencies and the Environmental Justice Council, to review scientific information and data and to establish strategic priorities for money spent from the State Agency Program Fund and Disproportionately Impacted Community Fund. Specifies that the Council can only establish or amend strategic priorities after a public hearing and opportunity for public comment, but that the priorities are not subject to Administrative Procedures Act requirements.

Section 10: State Agency Program Fund Establishment

Establishes the State Agency Program Fund and requires that all moneys be continuously appropriated to, and administered by, OWEB for the purpose of making allocations to state agencies that have been approved by the Council. Specifies that State Agency Program Fund money is allowed to be committed for funding state agency projects or programs for multiple biennia.

Section 11: Disproportionately Impacted Community Fund Establishment

Establishes the Disproportionately Impacted Community Fund and requires that all moneys be continuously appropriated to, and administered by, OWEB for the purpose of providing grants to nonprofit entities as directed by the Council.

Section 12: Tribal Nation Natural Resources Program Fund Establishment

Establishes the Tribal Nation Natural Resources Program Fund and requires that all moneys be continuously appropriated to, and administered by, OWEB for the purpose of making transfers to federally recognized Indian tribes.

Section 13: First Transfer Date

Requires the Council to first determine the amounts to be transferred for distribution by December 1, 2025.

SB 1561 A STAFF MEASURE SUMMARY

Section 14: Terms of First Gubernatorial Appointments to Council

Specifies lengths of terms for initial Council member appointments.

Section 15: Council Report in 2073

Directs the Council to submit a report to environment related interim legislative committees by September 15, 2073. Requires that the report evaluate and make recommendations as to whether the long-term distribution strategy for the Oregon Environmental Restoration Fund should continue to be distributed indefinitely as provided for under Section 4 of this Act, or whether the amendments to distributions under Sections 16 to 17 of this Act should be implemented such that no balance remains in the fund after a period of 50 years.

Sections 16 - 17: Amendments to Distributions in 2075

Directs amendments to distributions, becoming operative on January 1, 2075, such that the long-term distribution policy for the Oregon Environmental Restoration Fund no longer seeks to maintain a stable real asset value over time.

Sections 18 - 22: PCB Remediation and Restitution Account and Appropriation

Directs the Department of Administrative Services to distribute \$5 million from the PCB Remediation and Restitution Account to OWEB, and transfer the remainder to the Oregon Environmental Restoration Fund. Following these distributions and transfers on January 2, 2026, directs the abolishment of the PCB Remediation and Restitution Account and repeals the associated statutes.

Section 23: Effective Date

Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- Historic nature of the Monsanto Settlement Agreement, both for Oregon and nationwide
- Intent for settlement funds to supplement, not supplant, existing funding for natural resources programs
- Potential to augment brownfield needs, depending on Council prioritization
- Settlement drafted in a such a way to give the state and tribes flexibility to address many needs across air, water, soil, other natural resources, and human health
- Language intentionally structured to give Council time to set-up and do prioritization work before distributions begin
- Role of the Council in prioritization and decision-making processes for state agency and community funds, and as a pass-through entity for the tribal fund

EFFECT OF AMENDMENT:

The amendment streamlines project and purpose language to require that fund money be spent in a manner consistent with the terms of the Monsanto Settlement Agreement. The amendment modifies a number of additional provisions related to distribution planning and policies, accounting, and roles of agencies, the Council, and the State Treasurer.

Detailed Summary:

Section 1: Legislative Intent

Removes the purpose language to characterize and repair harm to the environment and human health, and replaces it with environmental remediation or restitutionary projects or purposes having a nexus with environmental harms to air, water, soil, other natural resources, or human health caused by environmental contamination. Clarifies the intent of the Legislative Assembly that projects and purposes are consistent with the terms of the Monsanto Settlement Agreement.

Section 3: Oregon Environmental Restoration Fund Establishment

Provides that Oregon Environmental Restoration Fund money, rather than the earnings on fund money, is continuously appropriated to OWEB. Clarifies that money in the fund is to be expended consistent with the terms

SB 1561 A STAFF MEASURE SUMMARY

of the Monsanto Settlement Agreement. Specifies that OWEB will administer the fund, and that the State Treasurer will provide accounting services for the fund.

Section 4: Distributions

Directs the Council, based on the advice of the State Treasurer, to establish a long-term distribution policy for the Oregon Environmental Restoration Fund that seeks to maintain a stable real asset value over time while providing for the transfers in this Act. Requires the Council to annually determine the amounts that will be transferred to OWEB. Modifies the maximum transfer for reasonable administrative expenses by replacing five percent of total earnings with 0.25 percent of the fund balance at the end of the prior fiscal year, unless a greater amount is approved by the Council.

Section 5: Environmental Restoration Council Establishment

Adds the Attorney General or their designee as a member of the Council. Increases the number of gubernatorial appointees to the Council from five to six.

Section 6 - 8: Funds to Receive Distributions

Removes the requirement that funds be allocated for "environmental characterization, remediation, or restitution" projects, which has the effect that projects and purposes must instead be consistent with the terms of the Monsanto Settlement Agreement and strategic priorities established under Section 9 of this Act. Limits recipient state agencies to those agencies that have a nexus with the projects and purposes described in the Monsanto Settlement Agreement.

Section 9: Strategic Priorities for Expenditures

Specifies that the Council consult with those state agencies that have a nexus with the projects and purposes of the Monsanto Settlement Agreement. Eliminates the requirement that strategic prioritization include characterizing the presence of PCB or other environmental contaminants in specified areas and addressing harms to the environment or public health as a result of PCB or other environmental contamination.

Sections 10 - 12: Establishment of Funds to Receive Distributions

Clarifies that OWEB will administer the three funds that will receive distributions. Specifies that State Agency Program Fund money is allowed to be committed for funding state agency projects or programs for multiple biennia.

Section 13: First Transfer Date

Requires the Council to first determine the amounts to be transferred, rather than OWEB first transferring earnings of money, by December 1, 2025.

Section 14: Terms of First Gubernatorial Appointments to Council

Modifies the number of initial Council members from one to two members that will serve a term of two years.

Section 15: Council Report in 2073

Modifies the "rate of disbursement of the principal and earnings" terminology to align with "long-term distribution strategy" terminology in Section 4 of the amendment.

Sections 16 - 17: Amendments to Distributions in 2075

Updates provisions to align with Section 4 of the amendment.

Sections 18 - 22: PCB Remediation and Restitution Appropriation

Clarifies that the Department of Administrative Services will be the entity that distributes \$5 million from the PCB Remediation and Restitution Account to OWEB, and transfers the remainder to the Oregon Environmental Restoration Fund. Following these distributions and transfers on January 2, 2026, directs the abolishment of the PCB Remediation and Restitution Account and repeals the associated statutes.

BACKGROUND:

This Summary has not been adopted or officially endorsed by action of the committee.

SB 1561 A STAFF MEASURE SUMMARY

In 2018, the State of Oregon filed a lawsuit against Monsanto for the company's role in polluting Oregon's land and waterways with polychlorinated biphenyls (PCB) for nearly a century. The complaint in the lawsuit alleged that Monsanto was aware as early as 1937 of the highly toxic nature of PCBs, but continued to manufacture them until they were banned in 1977. PCBs are toxic compounds that were formerly used in coolants, flame retardants, electrical equipment, hydraulic oils, paint, caulking, and copy paper. PCBs are persistent pollutants that bioaccumulate in fish and wildlife, so they are still polluting Oregon's land and waterways today and clean-up is time-intensive and costly.

In 2022, a settlement was reached between the State of Oregon and Monsanto for \$698 million, the largest environmental settlement in the state's history. The settlement went into effect on December 15, 2022.