

# SENATE BILL REPORT

## SB 5125

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As Reported By Senate Committee On:  
Water, Energy & Environment, February 10, 2005  
Ways & Means, February 24, 2005

**Title:** An act relating to soils contamination in child use areas.

**Brief Description:** Reducing heavy metals in child use area soils.

**Sponsors:** Senators Kohl-Welles, Poulsen, Keiser, Franklin, Fraser, Pridemore and Kline.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 1/13/05, 2/10/05 [DPS-WM, DNPS]  
Ways & Means: 2/22/05, 2/24/05 [DP2S, DNP, w/oRec].

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** That Substitute Senate Bill No. 5125 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

**Minority Report:** Do not pass substitute.

Signed by Senators Morton, Ranking Minority Member; Hewitt, Honeyford and Mulliken.

**Staff:** Sam Thompson (786-7413)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5125 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Kohl-Welles, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

**Minority Report:** Do not pass.

Signed by Senators Brandland and Parlette.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Fairley and Schoesler.

**Staff:** Brian Sims (786-7431)

**Background:** Area-wide soil contamination is low-to-moderate contamination dispersed over large areas ranging from several hundred acres to many square miles. In many areas of Washington, soil contains low-to-moderate levels of arsenic and lead contamination from three sources: air emissions from metal smelters, use of lead arsenate pesticides, and

combustion of leaded gasoline. Human exposure to high levels of these heavy metals can cause many health disorders.

In 2001, the Legislature directed the Department of Ecology (DOE) to address area-wide soil contamination issues. In response, DOE chartered an Area-Wide Soil Contamination Task Force to offer advice about a statewide strategy to respond to low-to-moderate level arsenic and lead contamination. Among other proposals in a 2003 report, the Task Force advocated soil testing and protective measures for outdoor areas frequented by children, who are particularly sensitive to poisoning from heavy metals.

**Summary of Second Substitute Bill:** The safe playground soils program, administered by the Department of Ecology (DOE) with assistance from the Department of Health (DOH) and local health jurisdictions, is created. The program's objective is to reduce health risks to young children and others from lead, arsenic, and potentially other heavy metals in soils in child use facilities. Child use facilities are outdoor areas frequented by children 12 and younger within public and private schools, preschools, child-care centers, family day-care providers, parks, sportsfields, and seasonal camps.

DOE will provide grants to local health jurisdictions to test soils at child use areas and will itself test soils when requested by facility owners if a local health jurisdiction elects not to conduct testing. To implement responses at facilities with elevated lead and arsenic levels, DOE may provide grants to facility owners and local health jurisdictions.

DOE will coordinate testing, report test results, and develop and implement response practices, which will include a range of alternatives, based upon circumstances. DOE may regulate contamination by other heavy metals if comparable public health benefits may be achieved.

DOE may allocate funds to other state agencies to implement elements of the safe playground soils program.

Licensing Restriction. By July 1, 2009, the Department of Social and Health Services (DSHS) must condition licensing of day-care centers and family day-care providers upon compliance with soil testing requirements and best management practices for elevated contaminant levels.

Higher Risk Zones. DOE and local health jurisdictions will give a high priority to grants for soil testing at facilities within higher risk zones, which include the Tacoma smelter plume zone and any other area defined by DOE, or a local health jurisdiction, as having a high probability of encompassing contaminated child use areas.

The Tacoma smelter plume zone, which includes parts of King, Pierce, Kitsap, and Thurston counties, will be defined by DOE by July 1, 2006. Grant administrators must notify facilities within that zone of grant availability and encourage owners to conduct testing.

By the end of 2005 and 2007, DOE must report to the Governor and legislature regarding testing within higher risk zones. By July 1, 2009, DOE and DOH must assess testing within the zones; if tests have been conducted at less than 80 percent of child use areas within the zones, by the end of 2010 DOH must adopt regulations requiring testing in the zones by local health jurisdictions or DOE.

Testing and Test Results. Facility owners must permit parents to obtain soil samples for soil testing. Owners may impose reasonable conditions on site access and require that a split sample be provided to them.

Facility owners must make soil test results available to parents and facility staff. Where tests indicate levels requiring a response, owners must notify parents and staff of the results and the planned response, and also provide the results to DOE, which will forward the results to local health jurisdictions. Park owners must notify park staff and obtain guidance from the local health jurisdictions in notifying park users.

Owner Response. Facility owners must inform DOE in writing of their response and make pertinent information available to parents and facility staff. A facility owner that properly implements a response may request a recognition of voluntary cleanup letter from DOE. If DOE concludes that the owner has properly implemented the response, it may issue the letter and charge a reasonable administrative fee.

DOE must establish an enforcement policy regarding the safe playground soils program through orders to facility owners implementing responses. The policy will not apply if an owner fails to properly implement a response or refuses to provide DOE with information or reasonable site access. The policy will also not apply to hazardous substances not addressed within a response or to ground water contamination caused by heavy metals.

The policy will not affect an owner's ability, under existing law, to reach a settlement agreement with DOE, conduct a voluntary cleanup or request a "no further action" letter from DOE.

Funding. If soil testing requests and administrative costs exceed the appropriation, DOE will request additional funds in the next legislative session.

**Second Substitute Bill Compared to Substitute Bill:** Changes the compliance date for licensed day care providers to July 1, 2009.

**Substitute Bill Compared to Original Bill:** Local health jurisdictions or DOE will conduct soil testing, rather than facility owners. DOE may provide grants to facility owners to implement necessary responses. Expressly provides that the authority of DOE and other agencies to address soil contamination under other law is not limited. References to "Asarco" in the description of the high priority area in southern Puget Sound are deleted; instead the area is the "Tacoma smelter plume zone." Deletes provisions: requiring non-state match to grants; limiting grant amounts based on the size of the area to be tested; allowing DOE to condition grants on agreed compliance with quality protocols and response practices; giving DSHS authority to administer grants to child care centers and family day care providers, and local health jurisdictions authority to administer grants to schools and parks; and requiring DOE to include, in cleanup guidelines, cost-effective alternatives for reducing exposure to contaminants.

**Appropriation:** Up to \$1 million from the state toxics control account to DOE for the biennium ending June 30, 2007.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Current state soils testing for toxic heavy metals is not reaching enough schools, even in priority counties. Lead, arsenic, cadmium and other heavy metals in soils in the very large Asarco smelter plume zone do not degrade over time, and cause serious long-term health problems. Remediation under this bill need not be expensive, and could include fencing off some areas.

**Testimony Against:** Remediation costs borne by facilities could be very high, leading to business, park and school closures and operation of unlicensed day care centers; in addition, public notice of contamination will reduce property values. The state already administers a grant program to fund cleanup of contaminants. The severity of the problem is overstated, and "best management practices" promoted in this bill could morph into more stringent requirements.

**Who Testified:** PRO: Sen. Kohl-Welles; Rita Schenck, Institute for Environmental Research and Education; Agda Burchard, Washington Association for the Education of Young Children; Stu Jacobson, Washington Parents for Safe Child Care; Jim Pendowski, Department of Ecology. Loni Johns-Brown, The Collaborative CON: Jim Halstrom, Washington State Horticultural Association; Craig Larsen, Washington Recreation & Park Association. CONCERNS: Greg Williamson and John Richards, Office of Superintendent of Public Instruction;.

Signed In, Unable to Testify & Submitted Written Testimony: CONCERNS: Janice Adair, Department of Health.