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SECOND SUBSTITUTE SENATE BILL 5125

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State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Poulsen, Keiser, Franklin, Fraser, Kline and Pridemore)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to soils contamination in child use areas; adding  
2 a new section to chapter 70.105D RCW; adding a new section to chapter  
3 74.15 RCW; adding a new chapter to Title 70 RCW; and making an  
4 appropriation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that elevated levels  
7 of arsenic and lead are present in some areas of Washington from  
8 primarily three historical sources: Air emissions from metal smelters,  
9 application of lead arsenate pesticides, and combustion of leaded  
10 gasoline. This contamination, unlike that in most previously  
11 recognized contaminated sites, tends to be distributed over a wide  
12 geographic area and in a relatively thin layer near the ground surface.  
13 Exposure to high levels of arsenic can cause more than thirty distinct  
14 health effects, including nervous system damage, increased blood  
15 pressure, heart attack, stroke, and cancer of the bladder, lung, skin,  
16 and other organs. Lead can affect many parts of the body, causing  
17 health effects that include increased blood pressure, kidney damage,  
18 and brain damage. Although both children and adults can be adversely  
19 affected by lead poisoning, it is a particular concern for young

1 children. Arsenic and lead are both considered persistent  
2 contaminants, meaning that they bind strongly to soil and usually  
3 remain in the environment without breaking down or losing their  
4 toxicity, and thus can be a source of exposure for many decades.  
5 Because children, particularly young children, are more vulnerable to  
6 health effects from exposure to high levels of lead and arsenic, it is  
7 necessary and appropriate that state and local health agencies provide  
8 a focused program upon the health risks posed at child use areas in  
9 schools, parks, and day-care settings.

10 Therefore, it is the purpose of this chapter to create the safe  
11 playground soils program, through which technical and financial  
12 assistance will be provided by state and local health jurisdictions to  
13 the owners and operators of facilities having child use areas that may  
14 contain soils with elevated levels of heavy metals. It is further the  
15 purpose of this chapter to encourage testing of soils in such areas,  
16 and to require testing in geographic zones at higher risk of soil  
17 contamination.

18 The legislature further declares that the objective of this program  
19 is to obtain comprehensive information on the presence of heavy metals  
20 in child use areas, and to ensure that such information is made  
21 available to, and in some circumstances specifically provided to,  
22 parents of children attending or using the facility and the staff  
23 members working at the facility. It is the underlying premise of this  
24 program that comprehensive and high quality data and analysis, shared  
25 with all interested persons, will be the basis for timely and effective  
26 response measures to protect the health of children.

27 NEW SECTION. **Sec. 2.** The definitions in this section apply  
28 throughout this chapter and sections 11 and 12 of this act unless the  
29 context clearly requires otherwise.

30 (1) "Action level" means a soil concentration of a heavy metal  
31 expressed in milligrams of heavy metal per kilogram of soil, that the  
32 director of the department determines by rule is at a sufficiently low  
33 level and distributed in such a way that public health may be protected  
34 through implementation of best management practices.

35 (2) "Child use areas" means outdoor areas used frequently by  
36 children twelve years and younger in age for recreational or  
37 educational activities, located within the following facilities,

1 whether publicly or privately owned: (a) Schools and preschools; (b)  
2 child-care centers and family day-care providers; (c) parks and  
3 sportsfields; and (d) seasonal camps.

4 (3) "Department" means the department of ecology.

5 (4) "Heavy metals" means lead and arsenic. The department may  
6 include by rule, additional heavy metals in this definition with regard  
7 to specific activities of the program authorized in this chapter where  
8 it determines that comparable public health benefits may be achieved by  
9 applying the same testing and response measures to address  
10 contamination from such metals.

11 (5) "Parents" means parents, guardians and custodians.

12 NEW SECTION. **Sec. 3.** (1) The safe playground soils program is  
13 hereby created and consists of the elements described in this chapter  
14 and sections 11 and 12 of this act. The department shall administer  
15 the program with the assistance of the department of health and local  
16 health jurisdictions. The objective of the program is to maximize the  
17 reduction of health risks arising from the exposure of people,  
18 particularly young children, to heavy metals in soils located in child  
19 use areas. The department shall implement the program through a  
20 coordinated program of child use area testing, reporting of test  
21 results, and developing and implementing response measures where action  
22 levels are exceeded. The department may, through an interagency  
23 agreement, authorize the department of health or any local health  
24 jurisdiction to administer any activity in the program that is not  
25 otherwise assigned to the department of health or local health  
26 jurisdictions by this chapter or sections 11 or 12 of this act. The  
27 department shall administer the program statewide, while providing the  
28 principal devotion of resources to the higher risk geographic zones  
29 identified in section 5 of this act.

30 (2) The department may, through an interagency agreement, allocate  
31 a portion of the funds provided in this chapter to other state agencies  
32 to develop procedures and expertise needed to implement specific  
33 elements of the safe playground soils program.

34 NEW SECTION. **Sec. 4.** (1) The department shall provide grants  
35 through the local toxics control account to local health jurisdictions  
36 for testing soils at child use areas for the presence of heavy metals.

1 (2) In areas where the local health jurisdiction elects not to  
2 conduct soil testing at child use areas, the department shall test  
3 soils when requested by the owners of facilities with child use areas.

4 (3) The department shall actively publicize the soil testing  
5 program and solicit requests for soil testing with the objective of  
6 obtaining soil test results expeditiously and implementing best  
7 management practices where action level exceedances are found.

8 (4) The department and local health jurisdictions shall act  
9 expeditiously on requests for soil testing, providing a high priority  
10 in acting upon requests for testing at facilities located within the  
11 higher risk zones identified in section 5 of this act.

12 (5) For the biennium ending June 30, 2007, if total soil testing  
13 requests and costs of administering the program authorized by this  
14 chapter exceed the amounts appropriated for this purpose, the  
15 department shall request an additional appropriation at the next  
16 session of the legislature sufficient to satisfy these needs.

17 NEW SECTION. **Sec. 5.** (1) The following geographic areas are  
18 designated higher risk zones for potential soil contamination by heavy  
19 metals:

20 (a) The area of potential heavy metal deposition to soils from the  
21 Tacoma smelter, generally encompassing portions of King, Pierce,  
22 Kitsap, and Thurston counties, and referred to as the Tacoma smelter  
23 plume zone. The department shall by rule define this zone based upon  
24 available information no later than July 1, 2006;

25 (b) Any other geographic area that is defined by a local health  
26 jurisdiction or by the department by rule as having a high probability  
27 of encompassing child use areas with heavy metals in soils exceeding  
28 action levels.

29 (2) The agencies administering the grant program under section 4 of  
30 this act shall use maximum efforts to notify all facilities with child  
31 use areas within the Tacoma smelter plume zone of the availability of  
32 the public grants and the program created under this chapter. The  
33 agencies shall encourage facility owners to conduct soil testing within  
34 child use areas if tests have not already been conducted.

35 (3) Not later than January 1, 2006, and January 1, 2008, the  
36 department shall provide a report to the governor and to the  
37 appropriate committees of the house of representatives and senate

1 regarding the extent of testing conducted in child use areas within  
2 higher risk zones, including tests conducted with public grants and  
3 other testing.

4 (4) Not later than July 1, 2009, the department and the department  
5 of health shall jointly assess the level of testing of child use areas  
6 within the Tacoma smelter plume zone and other zones designated by  
7 local health jurisdictions or the department on or before July 1, 2007.  
8 If the departments determine that soil tests have been conducted at  
9 less than eighty percent of the child use areas within such zones, the  
10 department of health shall adopt a rule no later than December 31,  
11 2010, that requires soil tests to be conducted within such zones and  
12 any additional zones designated by local health jurisdictions or the  
13 department.

14 NEW SECTION. **Sec. 6.** (1) The results of a soil test of a child  
15 use area shall be made available upon request by the owner of the  
16 facility to parents of children attending or visiting the facility and  
17 staff members working at the facility. The facility owner shall use  
18 reasonable measures to inform parents and staff members of the  
19 existence of such test results, including posting of the information on  
20 the facility's web site, if the facility maintains a web site.

21 (2) Where soil tests indicate that the child use area contains  
22 soils exceeding action levels, the facility owner shall notify parents  
23 and staff members of the results and actions that the owner is planning  
24 in response. The facility owner shall also provide the test results to  
25 the department, which shall forward the information to the local health  
26 jurisdiction. With respect to publicly or privately owned parks, the  
27 owner shall notify staff members and obtain guidance from the local  
28 health jurisdiction as to the means to notify potential users of the  
29 park facility.

30 (3) The owners of facilities with child use areas shall permit  
31 parents of children attending the facility to obtain soil samples for  
32 soil testing. Owners may impose reasonable conditions on access for  
33 obtaining soil samples, and owners may require that a split sample be  
34 provided to them.

35 NEW SECTION. **Sec. 7.** (1) In consultation with the department of  
36 health, the department shall adopt best management practice guidelines

1 for facilities having elevated levels of heavy metals in child use area  
2 soils. The guidelines shall recommend a range of alternative measures  
3 considering the concentration, extent, and location of contamination  
4 and the nature and frequency of child use of the area.

5 (2) The department may provide grants to local health jurisdictions  
6 for technical assistance to owners of facilities with child use areas  
7 to implement best management practices.

8 (3) The department may provide grants to owners of facilities with  
9 child use areas to implement best management practices pursuant to  
10 plans developed under section 8 of this act.

11 NEW SECTION. **Sec. 8.** (1) The owner of a facility with a child use  
12 area for which soil tests indicate the presence of heavy metals  
13 exceeding action levels shall implement best management practices  
14 consistent with the guidelines adopted under section 7 of this act.  
15 Within ninety days of receipt of the soil tests the owner shall inform  
16 the department in writing of the owner's intended plan for implementing  
17 best management practices. The plan shall also be made available to  
18 the parents and staff members who work at the facility.

19 (2) An owner completing implementation of best management practices  
20 shall inform the department in writing and may request that the  
21 department provide a recognition of voluntary cleanup letter under  
22 section 9 of this act. Information regarding the implementation of  
23 best management practices shall be made available to the parents and  
24 staff members who work at the facility.

25 NEW SECTION. **Sec. 9.** The owner of a facility with a child use  
26 area that implements best management practices may request that the  
27 department issue a recognition of voluntary cleanup letter. The letter  
28 may be issued by the department where it concludes, based upon  
29 documentation submitted by the facility and any site visits and  
30 additional analysis that the department may choose to conduct, that the  
31 owner has implemented best management practices consistent with the  
32 guidelines adopted under section 7 of this act. The department may  
33 charge a fee for the department's costs reasonably attributable to  
34 reviewing the request and issuing the letter.

1        NEW SECTION.    **Sec. 10.** Nothing in this chapter or section 11 or 12  
2 of this act is intended to limit the authority of the department or  
3 other agencies to require actions to address soil contamination of  
4 child use areas under other laws.

5        NEW SECTION.    **Sec. 11.** A new section is added to chapter 70.105D  
6 RCW to read as follows:

7        (1) The department shall establish a policy regarding enforcement  
8 of this chapter through orders to owners of facilities implementing  
9 best management practices at child use areas under chapter 70.-- RCW  
10 (sections 1 through 10 of this act). The policy shall establish the  
11 primary objective of reducing exposure of children to heavy metals in  
12 soils through the testing and action steps of chapter 70.-- RCW  
13 (sections 1 through 10 of this act), rather than the enforcement  
14 authorities of this chapter.

15        (2) The policy shall not apply:

16        (a) If the facility owner fails to complete implementation of best  
17 management practices in a timely manner as determined by the  
18 department;

19        (b) If the facility owner refuses to provide information to the  
20 department or to provide reasonable access to the child use area by the  
21 department for soil testing or other site inspection;

22        (c) To hazardous substances not included within the best management  
23 practices plan developed under section 8 of this act, or to areas  
24 within the facility that are not child use areas addressed in the plan;  
25 or

26        (d) To ground water contamination whose source is heavy metals in  
27 the child use area.

28        (3) The policy in this section shall not affect the availability to  
29 the facility owner of the option to pursue and reach a settlement  
30 agreement under RCW 70.105D.040. It also shall not affect the owner's  
31 election to conduct a voluntary cleanup or to request a no further  
32 action letter from the department under the authority of this chapter.

33        (4) Except as expressly provided in this section, nothing in  
34 chapter 70.-- RCW (sections 1 through 10 of this act) affects or limits  
35 the provisions of this chapter.

36        (5) The definitions in section 2 of this act apply in this section.

1        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 74.15 RCW  
2 to read as follows:

3        (1) By July 1, 2009, the department of social and health services  
4 shall adopt as a condition of licensing day-care centers and family  
5 day-care providers that the facility is in compliance with applicable  
6 testing requirements and implementation of best management practices  
7 under chapter 70.-- RCW (sections 1 through 10 of this act).    The  
8 requirements shall include, but are not limited to, a condition of the  
9 license that requires implementation of best management practices where  
10 soil test results exceed action levels established by the department of  
11 ecology under section 3 of this act.    The department of social and  
12 health services shall also require that an applicant for a new license  
13 to operate a facility located or to be located within a higher risk  
14 zone designated under section 5 of this act must test soils located  
15 within the proposed child use area and commit to implementation of best  
16 management practices in the event that the test results indicate an  
17 exceedance above action levels.

18        (2) The definitions in section 2 of this act apply in this section.

19        NEW SECTION.    **Sec. 13.**    Sections 1 through 10 of this act  
20 constitute a new chapter in Title 70 RCW.

21        NEW SECTION.    **Sec. 14.**    The sum of one million dollars, or as much  
22 thereof as may be necessary, is appropriated from the state toxics  
23 control account to the department of ecology for the biennium ending  
24 June 30, 2007, to carry out the purposes of this act.

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