
SENATE BILL 5125

State of Washington

59th Legislature

2005 Regular Session

By Senators Kohl-Welles, Poulsen, Keiser, Franklin, Fraser, Kline and Pridemore

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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 lead arsenate pesticides, and combustion of leaded gasoline. Exposure
10 to high levels of arsenic can cause more than thirty distinct health
11 effects, including nervous system damage, increased blood pressure,
12 heart attack, stroke, and cancer of the bladder, lung, skin, and other
13 organs. Lead can affect many parts of the body, causing health effects
14 that include increased blood pressure, kidney damage, and brain damage.
15 Although both children and adults can be adversely affected by lead
16 poisoning, it is a particular concern for young children. Arsenic and
17 lead are both considered persistent contaminants, meaning that they
18 bind strongly to soil and usually remain in the environment without
19 breaking down or losing their toxicity, and thus can be a source of

1 exposure for many decades. Because children, particularly young
2 children, are more vulnerable to health effects from exposure to high
3 levels of lead and arsenic, it is necessary and appropriate that state
4 and local health agencies provide a focused program upon the health
5 risks posed at child use areas in schools, parks, and day-care
6 settings.

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

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

24 NEW SECTION. **Sec. 2.** The definitions in this section apply
25 throughout this chapter unless the context clearly requires otherwise.

26 (1) "Action level" means a soil concentration of a heavy metal
27 expressed in milligrams of heavy metal per kilogram of soil, that the
28 director of the department determines by rule is at a sufficiently low
29 level that public health may be protected through the implementation of
30 best management practices.

31 (2) "Child use areas" means outdoor areas used frequently by
32 children twelve years and younger in age for recreational or
33 educational activities, located within the following facilities,
34 whether publicly or privately owned: (a) Schools and preschools; (b)
35 child-care centers and family day-care providers; (c) parks and
36 sportsfields; and (d) seasonal camps.

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

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

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

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

25 NEW SECTION. **Sec. 4.** (1) The department shall make grants to
26 owners of facilities with child use areas for the purpose of testing
27 soils within those areas for the presence of heavy metals. The
28 department shall actively publicize the grant program and solicit
29 applications for grants with the objective of obtaining soil test
30 results expeditiously and implementing best management practices where
31 action level exceedances are found.

32 (2) To encourage early testing, for the period from the effective
33 date of this section through June 30, 2007, the amount of the nonstate
34 match required for the grant shall be limited to ten percent of the
35 grant amount. From and after July 1, 2007, the nonstate match shall be
36 no less than fifty percent of the grant amount.

1 (3) The department shall act expeditiously on grant applications
2 that it has received, providing a high priority in acting upon
3 applications for testing at facilities located within the higher risk
4 regions identified in section 5 of this act. Grants for testing at
5 child use areas shall be a maximum of one thousand dollars for child
6 use areas to be tested that are less than one acre and a maximum of two
7 thousand dollars for testing a greater area.

8 (4) The department may condition the grant to require that the soil
9 sampling, analysis, and reporting meet the department's quality
10 assurance protocols, including a requirement that a certified
11 laboratory conduct the analysis. The grantee shall also be required as
12 a condition of the grant to provide a copy of the test results to the
13 department, who shall provide a copy to the local health jurisdiction.
14 The grant shall also be conditioned upon the grantee's agreement to
15 implement best management practices consistent with the guidelines
16 adopted under section 7 of this act where the test results indicate
17 heavy metals contamination exceeding action thresholds.

18 (5) The department may request and delegate through interagency
19 agreement the administration of grants:

20 (a) To child-care centers and family day-care providers, by the
21 licensing division within the department of social and health services;
22 and

23 (b) To schools and parks facilities, by the local health
24 jurisdiction.

25 (6) For the biennium ending June 30, 2007, where the total eligible
26 grant requests and the costs of administering the program authorized by
27 this chapter exceed the amounts appropriated for this purpose, the
28 department shall request an additional appropriation at the next
29 session of the legislature sufficient to satisfy the eligible grant
30 requests.

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

34 (a) The area of potential heavy metal deposition to soils from the
35 Tacoma smelter, generally encompassing portions of King, Pierce,
36 Kitsap, and Thurston counties, and referred to as the Asarco smelter

1 plume zone. The department shall define this zone based upon existing
2 information no later than October 1, 2005;

3 (b) Any other geographic area that is defined by a local health
4 jurisdiction as having a high probability of encompassing child use
5 areas with the presence of heavy metals in playground soils exceeding
6 action levels.

7 (2) The agencies administering the grant program under section 4 of
8 this act shall use maximum efforts to notify all facilities with child
9 use areas within the Asarco smelter plume zone of the availability of
10 the public grants and the program under this chapter. The agencies
11 shall encourage facility owners to conduct soil testing within the
12 child use areas if tests have not already been conducted.

13 (3) Not later than January 1, 2006, and January 1, 2008, the
14 department shall provide a report to the governor and to the
15 appropriate committees of the house of representatives and senate
16 regarding the extent of testing conducted in child use areas within
17 higher risk zones, including tests conducted with public grants and
18 other testing.

19 (4) Not later than July 1, 2009, the department and the department
20 of health shall jointly assess the level of testing of child use areas
21 within the Asarco smelter plume zone and other zones designated by
22 local health jurisdictions on or before July 1, 2007. If the
23 departments determine that soil tests have been conducted at less than
24 eighty percent of the child use areas within such zones, the department
25 of health shall adopt a rule no later than December 31, 2010, that
26 requires soil tests to be conducted within such zones and any
27 additional zones designated by local health jurisdictions.

28 NEW SECTION. **Sec. 6.** (1) The results of a soil test of a child
29 use area shall be made available upon request by the owner of the
30 facility to the parents and guardians of children attending or visiting
31 the facility, as well as to the staff of the facility. The facility
32 owner shall use reasonable measures to inform parents, guardians, and
33 staff of the existence of such test results, including posting of the
34 information on a web site if maintained by the facility.

35 (2) Where soil tests indicate the child use area contains soils
36 exceeding action levels, the facility owner shall notify parents,
37 guardians, and staff of the results and the actions that the owner is

1 planning in response. The facility owner shall also provide the test
2 results to the department, which shall forward the information to the
3 local health jurisdiction. In the case of publicly or privately owned
4 parks, the owner shall notify the staff and obtain guidance from the
5 local health jurisdiction as to the means to notify potential users of
6 the park facility.

7 (3) The owners of facilities with child use areas shall permit
8 parents of children attending the facility to obtain soil samples for
9 the purposes of soil testing. Owners may impose reasonable conditions
10 on access for the purpose of obtaining soil samples, and owners may
11 require that a split sample be provided to them.

12 NEW SECTION. **Sec. 7.** (1) The department in consultation with the
13 department of health shall adopt best management practice guidelines
14 for facilities having elevated levels of heavy metals in child use area
15 soils. The guidelines shall recommend a range of alternative measures
16 considering the extent and location of the contamination and the nature
17 and frequency of child use of the area. The guidelines shall recommend
18 cost-effective alternatives for reducing exposure to contaminated soil,
19 such as personal hygiene measures for areas with lower heavy metal
20 concentrations, removing child use from the area of soil contamination,
21 and soils cleanup.

22 (2) The department, within available funds, may provide grants to
23 local health jurisdictions for the purpose of providing technical
24 assistance to owners of child use areas to implement best management
25 practices.

26 NEW SECTION. **Sec. 8.** (1) The owner of a facility with a child use
27 area for which soil tests indicate the presence of heavy metals
28 exceeding action levels shall implement best management practices
29 consistent with the guidelines adopted under section 7 of this act.
30 Within ninety days of receipt of the soil tests the owner shall inform
31 the department in writing of the owner's intended plan for implementing
32 best management practices. The plan shall also be made available to
33 the parents and staff of the facility.

34 (2) An owner completing the implementation of best management
35 practices shall inform the department in writing and may request that
36 the department provide a recognition of voluntary cleanup under the

1 procedures of section 9 of this act. Information regarding the
2 implementation of best management practices shall be made available to
3 the parents and staff of the facility.

4 NEW SECTION. **Sec. 9.** The owner of a facility having a child use
5 area that implements best management practices may request that the
6 department issue a recognition of voluntary cleanup letter. The letter
7 may be issued by the department where it concludes, based upon the
8 documentation submitted by the facility and any site visits and
9 additional analysis that the department may choose to conduct, that the
10 owner has implemented best management practices consistent with the
11 guidelines under section 7 of this act. The department may charge a
12 reasonable fee for the department's direct costs of reviewing the
13 request and issuing the letter.

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.105D
15 RCW to read as follows:

16 (1) The department shall establish an enforcement forbearance
17 policy regarding owners of facilities implementing best management
18 practices at child use areas under chapter 70.-- RCW (sections 1
19 through 9 of this act). The policy shall establish the primary
20 objective of reducing exposure of children to heavy metals in soils
21 through the testing and action steps of chapter 70.-- RCW (sections 1
22 through 9 of this act), rather than the enforcement authorities of this
23 chapter.

24 (2) The forbearance policy shall not apply:

25 (a) If the facility owner fails to complete implementation of best
26 management practices in a timely manner as determined by the
27 department;

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

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

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

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

6 (4) Except as expressly provided in this section, nothing in
7 chapter 70.-- RCW (sections 1 through 9 of this act) affects or limits
8 the provisions of this chapter.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 74.15 RCW
10 to read as follows:

11 By July 1, 2007, the department shall adopt as a condition of
12 licensing day-care centers and family day-care providers that the
13 facility is in compliance with applicable testing requirements and
14 implementation of best management practices under chapter 70.-- RCW
15 (sections 1 through 9 of this act). The requirements shall include,
16 but are not limited to, a condition of the license that requires
17 implementation of best management practices where soil test results
18 exceed action levels established by the department of ecology under
19 section 3 of this act. The department shall also require that an
20 applicant for a new license to operate a facility located or to be
21 located within a higher risk zone designated under section 5 of this
22 act must test soils located within the proposed child use area and
23 commit to implementation of best management practices in the event that
24 the test results indicate an exceedance above action levels.

25 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act constitute
26 a new chapter in Title 70 RCW.

27 NEW SECTION. **Sec. 13.** The sum of one million dollars, or as much
28 thereof as may be necessary, is appropriated from the state toxics
29 control account to the department of ecology for the biennium ending
30 June 30, 2007, to carry out the purposes of this act.

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