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HOUSE BILL 3135

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Upthegrove and Schual-Berke

Read first time 01/28/2004. Referred to Committee on Fisheries,  
Ecology & Parks.

1 AN ACT Relating to implementing an area-wide soil contamination  
2 initiative; amending RCW 70.105.010; adding new sections to chapter  
3 70.105 RCW; creating a new section; and making an appropriation.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that emissions from  
6 metal smelters, the use of lead arsenate pesticides, the combustion of  
7 leaded gasoline, and other sources have contributed to arsenic and lead  
8 soil contamination covering dispersed areas in the state. The  
9 legislature further finds area-wide soil contamination presents special  
10 challenges with respect to human health protection, land use, financial  
11 impacts, and public awareness. The legislature further finds that  
12 existing clean-up rules may place a significant burden on individual  
13 homeowners, discouraging efforts to address potential public health  
14 risks. The legislature further finds that the area-wide soil  
15 contamination task force report provides recommendations for a  
16 statewide strategy for addressing area-wide soil contamination. The  
17 legislature therefore finds it in the public interest to implement an  
18 area-wide soil contamination initiative that contains a broad-based  
19 approach to education and awareness, identifies areas where area-wide

1 soil contamination is located, provides guidance on assessing  
2 properties, removes barriers to testing private property, and provides  
3 for the implementation of steps to protect public health, especially  
4 children.

5 **Sec. 2.** RCW 70.105.010 and 1989 c 376 s 1 are each amended to read  
6 as follows:

7 The words and phrases defined in this section shall have the  
8 meanings indicated when used in this chapter unless the context clearly  
9 requires otherwise.

10 (1) "Area-wide soil contamination" means low to moderate level soil  
11 contamination that is dispersed over a large geographic area ranging  
12 from several hundred acres to many square miles.

13 (2) "Area-wide soil contamination zone" means an area where the  
14 department has determined a probability exists for area-wide soil  
15 contamination.

16 (3) "Child-use area" means public schools, public parks, and public  
17 and private child care facilities.

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

19 ~~((+2))~~ (5) "Director" means the director of the department of  
20 ecology or the director's designee.

21 ~~((+3))~~ (6) "Disposal site" means a geographical site in or upon  
22 which hazardous wastes are disposed of in accordance with the  
23 provisions of this chapter.

24 ~~((+4))~~ (7) "Dispose or disposal" means the discarding or  
25 abandoning of hazardous wastes or the treatment, decontamination, or  
26 recycling of such wastes once they have been discarded or abandoned.

27 ~~((+5))~~ (8) "Dangerous wastes" means any discarded, useless,  
28 unwanted, or abandoned substances, including but not limited to certain  
29 pesticides, or any residues or containers of such substances which are  
30 disposed of in such quantity or concentration as to pose a substantial  
31 present or potential hazard to human health, wildlife, or the  
32 environment because such wastes or constituents or combinations of such  
33 wastes:

34 (a) Have short-lived, toxic properties that may cause death,  
35 injury, or illness or have mutagenic, teratogenic, or carcinogenic  
36 properties; or

1 (b) Are corrosive, explosive, flammable, or may generate pressure  
2 through decomposition or other means.

3 ~~((6))~~ (9) "Eligible property" means child-use areas and private  
4 residences within area-wide soil contamination zones.

5 (10) "Extremely hazardous waste" means any dangerous waste which

6 (a) will persist in a hazardous form for several years or more at  
7 a disposal site and which in its persistent form

8 (i) presents a significant environmental hazard and may be  
9 concentrated by living organisms through a food chain or may affect the  
10 genetic make-up of man or wildlife, and

11 (ii) is highly toxic to man or wildlife

12 (b) if disposed of at a disposal site in such quantities as would  
13 present an extreme hazard to man or the environment.

14 ~~((7))~~ (11) "Initiative" means the area-wide soil contamination  
15 initiative in section 4 of this act.

16 (12) "Low to moderate soil contamination" means arsenic  
17 concentrations of up to one hundred milligrams per kilogram and lead  
18 concentrations ranging from five hundred to seven hundred milligrams  
19 per kilogram.

20 (13) "Person" means any person, firm, association, county, public  
21 or municipal or private corporation, agency, or other entity  
22 whatsoever.

23 ~~((8))~~ (14) "Pesticide" shall have the meaning of the term as  
24 defined in RCW 15.58.030 as now or hereafter amended.

25 ~~((9))~~ (15) "Solid waste advisory committee" means the same  
26 advisory committee as per RCW 70.95.040 through 70.95.070.

27 ~~((10))~~ (16) "Designated zone facility" means any facility that  
28 requires an interim or final status permit under rules adopted under  
29 this chapter and that is not a preempted facility as defined in this  
30 section.

31 ~~((11))~~ (17) "Facility" means all contiguous land and structures,  
32 other appurtenances, and improvements on the land used for recycling,  
33 storing, treating, incinerating, or disposing of hazardous waste.

34 ~~((12))~~ (18) "Preempted facility" means any facility that includes  
35 as a significant part of its activities any of the following  
36 operations: (a) Landfill, (b) incineration, (c) land treatment, (d)  
37 surface impoundment to be closed as a landfill, or (e) waste pile to be  
38 closed as a landfill.

1       (~~(13)~~) (19) "Hazardous household substances" means those  
2 substances identified by the department as hazardous household  
3 substances in the guidelines developed under RCW 70.105.220.

4       (~~(14)~~) (20) "Hazardous substances" means any liquid, solid, gas,  
5 or sludge, including any material, substance, product, commodity, or  
6 waste, regardless of quantity, that exhibits any of the characteristics  
7 or criteria of hazardous waste as described in rules adopted under this  
8 chapter.

9       (~~(15)~~) (21) "Hazardous waste" means and includes all dangerous  
10 and extremely hazardous waste, including substances composed of both  
11 radioactive and hazardous components.

12       (~~(16)~~) (22) "Local government" means a city, town, or county.

13       (~~(17)~~) (23) "Moderate-risk waste" means (a) any waste that  
14 exhibits any of the properties of hazardous waste but is exempt from  
15 regulation under this chapter solely because the waste is generated in  
16 quantities below the threshold for regulation, and (b) any household  
17 wastes which are generated from the disposal of substances identified  
18 by the department as hazardous household substances.

19       (~~(18)~~) (24) "Service charge" means an assessment imposed under  
20 RCW 70.105.280 against those facilities that store, treat, incinerate,  
21 or dispose of dangerous or extremely hazardous waste that contains both  
22 a nonradioactive hazardous component and a radioactive component.  
23 Service charges shall also apply to facilities undergoing closure under  
24 this chapter in those instances where closure entails the physical  
25 characterization of remaining wastes which contain both a  
26 nonradioactive hazardous component and a radioactive component or the  
27 management of such wastes through treatment or removal, except any  
28 commercial low-level radioactive waste facility.

29       (25) "Site-specific public health plan" means measures developed  
30 for an eligible property containing individual protective measures,  
31 site-specific mitigation, and other remedial actions to protect public  
32 health on sites containing area-wide soil contamination.

33       NEW SECTION. Sec. 3. A new section is added to chapter 70.105 RCW  
34 to read as follows:

35       The department shall work with the department of health, the  
36 department of agriculture, the department of community, trade, and  
37 economic development, and local governments to increase knowledge of

1 area-wide soil contamination through a broad-based education and  
2 awareness campaign. The education campaign shall focus on persons and  
3 organizations that care for children including parents, educators,  
4 health care providers, and child care providers. The elements of the  
5 education campaign shall include but are not limited to providing:

6 (1) Information on where area-wide soil contamination is most  
7 likely to occur;

8 (2) Information on the health risks associated with exposure to  
9 area-wide soil contamination;

10 (3) Information on options for conducting voluntary individual  
11 property evaluations;

12 (4) Guidance on how to collect and analyze soil samples;

13 (5) Measures a person can take to reduce the likelihood of exposure  
14 to arsenic and lead in soil; and

15 (6) Educational materials for local permitting and land-use  
16 planning departments to educate developers and others regarding area-  
17 wide soil contamination.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.105 RCW  
19 to read as follows:

20 (1) The department shall implement an area-wide soil contamination  
21 initiative to minimize the potential for exposure to area-wide soil  
22 contamination, focusing efforts on the protection of children. The  
23 initiative shall include additional testing of sites in counties west  
24 of the crest of the Cascade mountains to determine the extent of  
25 contamination and improve existing data and maps. The initiative shall  
26 provide education, outreach, and financial incentives to seek voluntary  
27 participation by eligible persons within area-wide soil contamination  
28 zones.

29 (2) The department shall develop area-wide soil contamination  
30 zones within the state. The department shall assist local governments  
31 requesting assistance to identify area-wide soil contamination zones.

32 (3) Subject to available funds, the department shall:

33 (a) Conduct qualitative evaluations at all child-use areas within  
34 an area-wide soil contamination zone; and

35 (b) Conduct soil samples for individual properties and child-use  
36 areas warranting additional analysis.

1 (4) Within area-wide soil contamination zones, persons owning  
2 eligible properties may volunteer to participate in the area-wide soil  
3 contamination initiative.

4 (5) The department shall assist owners of eligible properties that  
5 volunteer to participate in the initiative by providing the following  
6 assistance including, but not limited to:

7 (a) Conducting qualitative evaluations to determine where area-wide  
8 soil contamination exposures could occur;

9 (b) Testing soils where evaluations indicate potential for  
10 contamination; and

11 (c) Providing technical and financial assistance to implement site-  
12 specific public health plans including, but not limited to, identifying  
13 appropriate individual protective measures, installing protective  
14 barriers, removal and replacement of small amounts of soil, tilling or  
15 blending of soil, and other remedial actions. To implement site-  
16 specific public health plans, the department may provide up to seventy-  
17 five percent of the cost for private residences or up to one hundred  
18 percent of the cost for child-use areas.

19 (6) The department shall establish a streamlined system to  
20 recognize eligible properties that have soil samples with lead and  
21 arsenic concentrations in compliance with model toxics control clean-up  
22 standards in chapter 70.105D RCW.

23 (7) The department shall establish an enforcement forbearance  
24 policy for eligible properties choosing to participate in the  
25 initiative. Owners of eligible property implementing site-specific  
26 public health plans in subsection (5) of this section are exempt from  
27 enforcement actions under chapter 70.105D RCW. Owners of eligible  
28 property choosing not to implement site-specific public health plans  
29 would not be exempt from enforcement under chapter 70.105D RCW.

30 (8)(a) Except as specified in (b) of this subsection, the  
31 department shall not use model toxics control act clean-up procedures  
32 under chapter 70.105D RCW for eligible properties with low to moderate  
33 contamination levels of lead and arsenic.

34 (b) The department shall use the clean-up procedures specified in  
35 chapter 70.105D RCW when:

36 (i) Individual properties have above low to moderate soil  
37 contamination levels of arsenic or lead;

1 (ii) Individual properties have contaminates other than arsenic and  
2 lead above standards developed pursuant to chapter 70.105D RCW;

3 (iii) Individual properties have ground water contamination or the  
4 department determines there is a significant risk of ground water  
5 contamination;

6 (iv) The individual property owner has implemented a final remedy  
7 under chapter 70.105D RCW; or

8 (v) The individual property owner chooses to use the clean-up  
9 procedures specified in chapter 70.105D RCW.

10 (c) Subject to available funds, the department shall provide  
11 financial assistance to eligible property owners in (b)(i) through  
12 (iii) of this subsection that must comply with chapter 70.105D RCW.  
13 The department shall not initiate enforcement actions against eligible  
14 property owners voluntarily participating in the initiative that are  
15 unable to implement remedial actions due to insufficient funding.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.105 RCW  
17 to read as follows:

18 The department shall assist other state agencies and local  
19 governments and provide funding where appropriate to implement area-  
20 wide soil contamination initiative activities including but not limited  
21 to:

22 (1) Obtaining additional scientific information on the health of  
23 Washington residents who may be exposed to arsenic and lead;

24 (2) Providing financial assistance to develop mandatory soil  
25 testing for new construction of public child-use areas;

26 (3) Providing financial assistance to the department of social and  
27 health services to develop a voluntary child care certification program  
28 to raise awareness of area-wide soil contamination;

29 (4) Providing financial assistance to local governments to identify  
30 historical orchard locations and update smelter emission plume  
31 dispersal areas, or other areas with a probability of area-wide soil  
32 contamination;

33 (5) Providing financial assistance to public health districts to  
34 conduct blood lead testing or urinary arsenic screening;

35 (6) Providing financial assistance to build area-wide soil  
36 contamination training into any system for the state training and  
37 registry system for child care training programs; and

1           (7) Amending the state environmental policy act checklist to  
2 address area-wide soil contamination.

3           NEW SECTION.   **Sec. 6.** The sum of one million five hundred thousand  
4 dollars, or as much thereof as may be necessary, is appropriated for  
5 the biennium ending June 30, 2005, from the local toxics control  
6 account--state to the department of ecology for the purposes of  
7 implementing sections 1 through 5 of this act.

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