

# HOUSE BILL REPORT

## HB 1605

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### As Reported by House Committee On:

Natural Resources, Ecology & Parks  
Appropriations

**Title:** An act relating to protecting children from area-wide soil contamination.

**Brief Description:** Protecting children from area-wide soil contamination.

**Sponsors:** Representatives Upthegrove, Dickerson, Schual-Berke, Cody, McDermott, Hunter, B. Sullivan, Simpson, Morrell, Murray, Chase, Roberts, Kenney and Santos.

### Brief History:

#### Committee Activity:

Natural Resources, Ecology & Parks: 2/17/05, 2/28/05 [DPS];  
Appropriations: 3/5/05 [DP2S(w/o sub NREP)].

#### Brief Summary of Second Substitute Bill

- Directs the Department of Ecology (DOE), in cooperation with the Department of Health and the Department of Social and Health Services, to assist schools and child care facilities within child use prioritization areas to reduce the potential for children's exposure to area-wide soil contamination.
- Authorizes the DOE to enter into interagency agreements with local health jurisdictions to administer activities to assist schools and child care facilities to address area-wide soil contamination.
- Requires schools and child care facilities to work with the DOE to provide access for soil sampling.

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### HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Blake, Dickerson, Eickmeyer, Hunt and Williams.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; DeBolt and Orcutt.

**Staff:** Jeff Olsen (786-7157).

**Background:**

The Legislature provided \$1,200,000 in the 2002 Operating Budget (Chapter 371, Laws of 2002) for the Department of Ecology (DOE), in conjunction with affected local governments, to address emergent area-wide soil contamination issues. The 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 soil contamination. The Area-Wide Contamination Report published in June 30, 2003, contains findings and recommendations for the statewide strategy.

The DOE currently has appropriation authority in the Capital budget from the Local Toxics Control Account (LTCA) for remedial actions, hazardous waste plans, and other purposes. From the LTCA, the DOE provides grants to local governments for a wide variety of cleanup projects including grants to address area-wide soil contamination.

The state Model Toxics Control Act (MTCA) requires sites contaminated with hazardous materials to be cleaned up by liable parties. The MTCA is carried out by the DOE to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up. The state cleanup standard for arsenic is 20 parts per million (PPM), and the state cleanup standard for lead is 250 PPM.

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**Summary of Substitute Bill:**

The Department of Ecology (DOE), in cooperation with the Department of Health (DOH) and the Department of Social and Health Services (DSHS), must assist schools and child care facilities within child use prioritization areas to reduce the potential for children's exposure to area-wide soil contamination. The DOE must:

1. define child use prioritization areas based on available information;
2. conduct qualitative assessments at schools and child care facilities within those areas by December 31, 2006, to determine if the potential exists for children's exposure to area-wide soil contamination;
3. if the evaluation determines that children may be routinely exposed to area-wide soil contamination, conduct soil sampling tests on those properties by December 31, 2008; and
4. notify schools regarding test results and next steps for implementing a property specific public health plans.

Schools and child care facilities must work with the DOE to provide site access for soil sampling. If a school or a child care facility with area-wide soil contamination does not implement a property specific public health plan within six months of receiving written notification from the DOE, the facility must notify parents or guardians in writing of the soil testing results. Property specific public health plans are measures developed by the DOE to protect public health on sites containing area-wide soil contamination. The DOE must recognize facilities that successfully implement cleanup plans with a voluntary certification program.

The DOE is directed to assist schools and child care facilities by providing technical and financial assistance to conduct qualitative evaluations, soil testing, and implementation of property specific public health plans. In addition, the DOE must establish a grant program to assist schools and child care facilities with property specific public health plans. The DOE and the DOH must also develop area-wide soil contamination best management practice guidelines for schools and day care facilities.

**Substitute Bill Compared to Original Bill:**

The substitute bill removes provisions directing the DOE to adopt rules defining area-wide soil contamination, geographic zones containing contamination, soil testing protocols, and other requirements to implement the program, and directs the DOE to define child use prioritization areas. The substitute bill directs schools and child care facilities to work with the DOE to provide access to their site to conduct soil sampling.

The substitute bill removes requirements for child care facilities to comply with area-wide soil certification requirements to obtain or renew licenses required by the Department of Social and Health Services, and directs the DOE to develop a voluntary certification program.

The substitute bill removes requirements for schools and child care facilities to conduct qualitative evaluations and soil testing, and directs the DOE to perform these activities.

The substitute bill removes provisions allowing citizens within the school district or a parent or guardian of a student enrolled in a school to seek enforcement of the area-wide soil contamination certification program in superior court. The substitute bill also removes authority for the DOE to enforce the requirements of the area-wide soil contamination certification program through remedial action orders under the MTCA.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support of original bill) Pollution plumes produced by industrial activities have deposited low levels of lead and arsenic across large areas. It is important to have information about areas where children can be subject to prolonged exposure to low levels of dangerous chemicals. Lead at any level can be dangerous, especially to children since the child's blood brain barrier is not fully developed. Arsenic has also been linked to a number of health problems. Children are especially susceptible because they play outdoors and often eat the dirt in their play areas.

Staff at the DOE have been working on similar initiatives, but have faced daycare areas that are not willing to allow the soil to be sampled. The DOE activities have included recommendations for best management practices, as well as soil sampling standards. The

DOE already has a good perspective as to what areas are affected, so implementation will not be overly burdensome. The program would be even more successful with involvement by the local health jurisdictions.

Parents expect schools and childcare areas to be safe learning environments, and the facilities should be held to a high safety standard. Daycares want to know when problems exist, at least when there is an expectation that the state will help them deal with the problem. This bill's approach is reasonable, since it provides timelines so that daycares can know what to expect.

This bill is narrowly drafted to only deal with children, and does not impact agriculture in any way, nor is it regulatory.

(With concerns on original bill) Testing should be mandatory at all child areas. In addition, any program designed to address area-wide soil contamination must be funded. Once the problem areas are identified, it will still take substantial investment to clean the area.

**Testimony Against:** (Opposed to original bill) This bill may have unintended consequences. It also unfairly targets the company that many people assume released most of the lead and arsenic that the bill addresses.

There is no proof that low-level exposure to lead or arsenic has negative health impacts. The risks do not justify the action and investment required by this bill. The state has higher priorities for using its investments that will provide more substantial health benefits. The bill does nothing to increase the health of children. It does not guarantee any cleaning of the soil, and instead creates an ongoing bureaucratic program.

**Persons Testifying:** (In support of original bill) Representative Uptegrove, prime sponsor; Steven G. Gilbert, Institution of Neurotoxicology and Neurological Disorders; Jim Matsuyama, Washington State Association of Local Public Health Offices; Michele Pasquale, Washington Parents for Safe Child Care; Jim Pendowski, Department of Ecology Toxics Cleanup; Lonnie Johns-Brown, The Collaborative; and Mary Keufield, State Parent Teacher Association.

(Opposed to original bill) Karen Pickett, Asarco Inc.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 15 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia and Schual-Berke.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Grant, Hinkle, Pearson, Priest, Talcott and Walsh.

**Staff:** Alicia Paatsch (786-7178).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:**

The second substitute bill authorizes the DOE to enter into interagency agreements with local health jurisdictions to administer activities to assist schools and child care facilities to address area-wide soil contamination as opposed to requiring DOE to perform all of these tasks. It adds the Office of Superintendent of Public Instruction and local health districts to work in cooperation with the DOE to implement area-wide soil contamination evaluation and cleanup measures, and removes the requirement that schools and child care facilities notify parents if a facility has not implemented a clean up plan within six months. A null and void clause was added, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** We support the way the bill is currently drafted because it requires the Department of Ecology to do the soil sampling and testing and requires that funding be made available for child care providers to mitigate the impacts to them. We understand that this funding would be from the Capital budget. We think this is an important health care issue and we agree with the sponsors that unhealthy children cannot learn.

**Testimony Against:** None.

**Persons Testifying:** (In support) Lonnie Johns-Brown, The Collaborative.

(With concerns) Greg Williamson, Office of the Superintendent of Public Instruction.

**Persons Signed In To Testify But Not Testifying:** None.