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**SENATE BILL 5037**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Braun, Mullet, Brown, Dozier, Holy, King, Schoesler, Wagoner, and Wilson, L.

Prefiled 12/24/20. Read first time 01/11/21. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to establishing transparent school opening  
2 metrics tied to COVID-19 prevalence; amending RCW 43.06.220,  
3 43.70.130, 43.20.050, and 70.05.070; adding a new section to chapter  
4 28A.630 RCW; creating a new section; providing a contingent  
5 expiration date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature acknowledges that  
8 school districts and charter schools are faced with challenging  
9 decisions regarding how to operate their schools during COVID-19 and  
10 whether they should offer in-person learning, distance learning, or  
11 hybrid or rotating schedules. The legislature recognizes that full-  
12 time, distance learning presents many challenges and hardships to  
13 students and families.

14 (2) The legislature finds that the best metric for determining  
15 prevalence of COVID-19 in a community is tied to the positivity  
16 standard within a county. This metric does not punish communities for  
17 testing more, as does a metric tied to cases per population. Further,  
18 the positivity metrics are linked to the world health organization  
19 metrics.

20 (3) The legislature intends to establish clear school opening  
21 metrics based on the positivity standard within counties, so these

1 decisions are transparent and uniform throughout the state of  
2 Washington.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.630  
4 RCW to read as follows:

5 (1) When the governor proclaims a state of emergency under  
6 chapter 43.06 RCW in response to COVID-19, school districts must use  
7 the metrics in this section to determine the education modality for  
8 the schools by county.

9 (a) School districts in counties below a five percent positivity  
10 standard must offer in-person learning to all students. To move out  
11 of this category, counties must be above a five percent positivity  
12 standard for two weeks in a row.

13 (b) School districts in counties above a five percent positivity  
14 standard may choose the education modality for their students. To  
15 move out of this category, counties must be below a five percent  
16 positivity standard for two weeks in a row.

17 (2) If a school district is located in more than one county, a  
18 school district must determine the average positivity standard of all  
19 the counties in which it is located to determine the education  
20 modality under subsection (1) of this section.

21 (3) If there is an outbreak of COVID-19 at a particular school, a  
22 school district and local health officer, in accordance with other  
23 state laws, must take all appropriate actions deemed necessary to  
24 control or eliminate the spread of COVID-19 within the affected  
25 school including:

26 (a) Closing part or all of the affected school;

27 (b) Canceling activities or functions at the affected school; and

28 (c) Excluding from the affected school any students, staff, and  
29 volunteers who are infectious, or exposed and susceptible to the  
30 disease.

31 (4) The definitions in this subsection apply throughout this  
32 section unless the context clearly requires otherwise.

33 (a) "Education modality" means the type of setting to deliver  
34 education services including, but not limited to, in-person learning,  
35 distance learning, and hybrid or rotating schedules with in-person  
36 learning and distance learning.

37 (b) "Outbreak" means the school meets the following criteria: (i)  
38 Two or more cases of laboratory positive COVID-19 among students or  
39 staff; (ii) the cases have symptom onsets within a fourteen-day

1 period of each other; (iii) plausible epidemiological-linkage in the  
2 school; and (iv) no other known epidemiological-linkage outside of  
3 the school.

4 (c) "Positivity standard" means the percent of individuals  
5 testing positive for COVID-19. It must be calculated by comparing the  
6 number of individuals testing positive over the past week to the  
7 total number of tests during that week.

8 (5) This section is a state health requirement under RCW  
9 28A.710.040 and applies to charter schools established in accordance  
10 with chapter 28A.710 RCW.

11 **Sec. 3.** RCW 43.06.220 and 2019 c 472 s 2 are each amended to  
12 read as follows:

13 (1) The governor after proclaiming a state of emergency and prior  
14 to terminating such, may, in the area described by the proclamation  
15 issue an order prohibiting:

16 (a) Any person being on the public streets, or in the public  
17 parks, or at any other public place during the hours declared by the  
18 governor to be a period of curfew;

19 (b) Any number of persons, as designated by the governor, from  
20 assembling or gathering on the public streets, parks, or other open  
21 areas of this state, either public or private;

22 (c) The manufacture, transfer, use, possession or transportation  
23 of a molotov cocktail or any other device, instrument or object  
24 designed to explode or produce uncontained combustion;

25 (d) The transporting, possessing or using of gasoline, kerosene,  
26 or combustible, flammable, or explosive liquids or materials in a  
27 glass or uncapped container of any kind except in connection with the  
28 normal operation of motor vehicles, normal home use or legitimate  
29 commercial use;

30 (e) The sale, purchase or dispensing of alcoholic beverages;

31 (f) The sale, purchase or dispensing of other commodities or  
32 goods, as he or she reasonably believes should be prohibited to help  
33 preserve and maintain life, health, property or the public peace;

34 (g) The use of certain streets, highways or public ways by the  
35 public; and

36 (h) Such other activities as he or she reasonably believes should  
37 be prohibited to help preserve and maintain life, health, property or  
38 the public peace.

1 (2) The governor after proclaiming a state of emergency and prior  
2 to terminating such may, in the area described by the proclamation,  
3 issue an order or orders concerning waiver or suspension of statutory  
4 obligations or limitations in the following areas:

5 (a) Liability for participation in interlocal agreements;

6 (b) Inspection fees owed to the department of labor and  
7 industries;

8 (c) Application of the family emergency assistance program;

9 (d) Regulations, tariffs, and notice requirements under the  
10 jurisdiction of the utilities and transportation commission;

11 (e) Application of tax due dates and penalties relating to  
12 collection of taxes;

13 (f) Permits for industrial, business, or medical uses of alcohol;  
14 and

15 (g) Such other statutory and regulatory obligations or  
16 limitations prescribing the procedures for conduct of state business,  
17 or the orders, rules, or regulations of any state agency if strict  
18 compliance with the provision of any statute, order, rule, or  
19 regulation would in any way prevent, hinder, or delay necessary  
20 action in coping with the emergency, unless (i) authority to waive or  
21 suspend a specific statutory or regulatory obligation or limitation  
22 has been expressly granted to another statewide elected official,  
23 (ii) the waiver or suspension would conflict with federal  
24 requirements that are a prescribed condition to the allocation of  
25 federal funds to the state, or (iii) the waiver or suspension would  
26 conflict with the rights, under the First Amendment, of freedom of  
27 speech or of the people to peaceably assemble. The governor shall  
28 give as much notice as practical to legislative leadership and  
29 impacted local governments when issuing orders under this subsection  
30 (2)(g).

31 (3) In imposing the restrictions provided for by RCW 43.06.010,  
32 and 43.06.200 through 43.06.270, the governor may impose them for  
33 such times, upon such conditions, with such exceptions and in such  
34 areas of this state he or she from time to time deems necessary.

35 (4) No order or orders concerning waiver or suspension of  
36 statutory obligations or limitations under subsection (2) of this  
37 section may continue for longer than thirty days unless extended by  
38 the legislature through concurrent resolution. If the legislature is  
39 not in session, the waiver or suspension of statutory obligations or  
40 limitations may be extended in writing by the leadership of the

1 senate and the house of representatives until the legislature can  
2 extend the waiver or suspension by concurrent resolution. For  
3 purposes of this section, "leadership of the senate and the house of  
4 representatives" means the majority and minority leaders of the  
5 senate and the speaker and the minority leader of the house of  
6 representatives.

7 (5) No order or orders issued under this section may supersede,  
8 waive, or suspend statutory and regulatory obligations or limitations  
9 concerning education modalities during COVID-19 set forth in section  
10 2 of this act.

11 (6) Any person willfully violating any provision of an order  
12 issued by the governor under this section is guilty of a gross  
13 misdemeanor.

14 **Sec. 4.** RCW 43.70.130 and 1990 c 132 s 2 are each amended to  
15 read as follows:

16 The secretary of health shall:

17 (1) Exercise all the powers and perform all the duties prescribed  
18 by law with respect to public health and vital statistics;

19 (2) Investigate and study factors relating to the preservation,  
20 promotion, and improvement of the health of the people, the causes of  
21 morbidity and mortality, and the effects of the environment and other  
22 conditions upon the public health, and report the findings to the  
23 state board of health for such action as the board determines is  
24 necessary;

25 (3) Strictly enforce all laws for the protection of the public  
26 health and the improvement of sanitary conditions in the state, and  
27 all rules, regulations, and orders of the state board of health;

28 (4) Enforce the public health laws of the state and the rules and  
29 regulations promulgated by the department or the board of health in  
30 local matters, when in its opinion an emergency exists and the local  
31 board of health has failed to act with sufficient promptness or  
32 efficiency, or is unable for reasons beyond its control to act, or  
33 when no local board has been established, and all expenses so  
34 incurred shall be paid upon demand of the secretary of the department  
35 of health by the local health department for which such services are  
36 rendered, out of moneys accruing to the credit of the municipality or  
37 the local health department in the current expense fund of the  
38 county;

1 (5) Investigate outbreaks and epidemics of disease that may occur  
2 and advise local health officers as to measures to be taken to  
3 prevent and control the same;

4 (6) Exercise general supervision over the work of all local  
5 health departments and establish uniform reporting systems by local  
6 health officers to the state department of health;

7 (7) Have the same authority as local health officers, except that  
8 the secretary shall not exercise such authority unless the local  
9 health officer fails or is unable to do so, or when in an emergency  
10 the safety of the public health demands it, or by agreement with the  
11 local health officer or local board of health;

12 (8) Cause to be made from time to time, personal health and  
13 sanitation inspections at state owned or contracted institutions and  
14 facilities to determine compliance with sanitary and health care  
15 standards as adopted by the department, and require the governing  
16 authorities thereof to take such action as will conserve the health  
17 of all persons connected therewith, and report the findings to the  
18 governor;

19 (9) Review and approve plans for public water system design,  
20 engineering, operation, maintenance, financing, and emergency  
21 response, as required under state board of health rules;

22 (10) Take such measures as the secretary deems necessary in order  
23 to promote the public health, to establish or participate in the  
24 establishment of health educational or training activities, and to  
25 provide funds for and to authorize the attendance and participation  
26 in such activities of employees of the state or local health  
27 departments and other individuals engaged in programs related to or  
28 part of the public health programs of the local health departments or  
29 the state department of health. The secretary is also authorized to  
30 accept any funds from the federal government or any public or private  
31 agency made available for health education training purposes and to  
32 conform with such requirements as are necessary in order to receive  
33 such funds; (~~and~~)

34 (11) Establish and maintain laboratory facilities and services as  
35 are necessary to carry out the responsibilities of the department;  
36 and

37 (12) Act in accordance with section 2 of this act concerning  
38 education modalities during COVID-19.

1       **Sec. 5.** RCW 43.20.050 and 2011 c 27 s 1 are each amended to read  
2 as follows:

3       (1) The state board of health shall provide a forum for the  
4 development of public health policy in Washington state. It is  
5 authorized to recommend to the secretary means for obtaining  
6 appropriate citizen and professional involvement in all public health  
7 policy formulation and other matters related to the powers and duties  
8 of the department. It is further empowered to hold hearings and  
9 explore ways to improve the health status of the citizenry.

10       In fulfilling its responsibilities under this subsection, the  
11 state board may create ad hoc committees or other such committees of  
12 limited duration as necessary.

13       (2) In order to protect public health, the state board of health  
14 shall:

15       (a) Adopt rules for group A public water systems, as defined in  
16 RCW (~~(70.119A.020)~~) 70A.125.010, necessary to assure safe and  
17 reliable public drinking water and to protect the public health. Such  
18 rules shall establish requirements regarding:

19       (i) The design and construction of public water system  
20 facilities, including proper sizing of pipes and storage for the  
21 number and type of customers;

22       (ii) Drinking water quality standards, monitoring requirements,  
23 and laboratory certification requirements;

24       (iii) Public water system management and reporting requirements;

25       (iv) Public water system planning and emergency response  
26 requirements;

27       (v) Public water system operation and maintenance requirements;

28       (vi) Water quality, reliability, and management of existing but  
29 inadequate public water systems; and

30       (vii) Quality standards for the source or supply, or both source  
31 and supply, of water for bottled water plants;

32       (b) Adopt rules as necessary for group B public water systems, as  
33 defined in RCW (~~(70.119A.020)~~) 70A.125.010. The rules shall, at a  
34 minimum, establish requirements regarding the initial design and  
35 construction of a public water system. The state board of health  
36 rules may waive some or all requirements for group B public water  
37 systems with fewer than five connections;

38       (c) Adopt rules and standards for prevention, control, and  
39 abatement of health hazards and nuisances related to the disposal of  
40 human and animal excreta and animal remains;

1 (d) Adopt rules controlling public health related to  
2 environmental conditions including but not limited to heating,  
3 lighting, ventilation, sanitary facilities, and cleanliness in public  
4 facilities including but not limited to food service establishments,  
5 schools, recreational facilities, and transient accommodations;

6 (e) Adopt rules for the imposition and use of isolation and  
7 quarantine;

8 (f) Adopt rules in accordance with section 2 of this act  
9 concerning education modalities during COVID-19, for the prevention  
10 and control of infectious and noninfectious diseases, including food  
11 and vector borne illness, and rules governing the receipt and  
12 conveyance of remains of deceased persons, and such other sanitary  
13 matters as may best be controlled by universal rule; and

14 (g) Adopt rules for accessing existing databases for the purposes  
15 of performing health related research.

16 (3) The state board shall adopt rules for the design,  
17 construction, installation, operation, and maintenance of those  
18 on-site sewage systems with design flows of less than three thousand  
19 five hundred gallons per day.

20 (4) The state board may delegate any of its rule-adopting  
21 authority to the secretary and rescind such delegated authority.

22 (5) All local boards of health, health authorities and officials,  
23 officers of state institutions, police officers, sheriffs,  
24 constables, and all other officers and employees of the state, or any  
25 county, city, or township thereof, shall enforce all rules adopted by  
26 the state board of health. In the event of failure or refusal on the  
27 part of any member of such boards or any other official or person  
28 mentioned in this section to so act, he or she shall be subject to a  
29 fine of not less than fifty dollars, upon first conviction, and not  
30 less than one hundred dollars upon second conviction.

31 (6) The state board may advise the secretary on health policy  
32 issues pertaining to the department of health and the state.

33 **Sec. 6.** RCW 70.05.070 and 2020 c 20 s 1066 are each amended to  
34 read as follows:

35 The local health officer, acting under the direction of the local  
36 board of health or under direction of the administrative officer  
37 appointed under RCW 70.05.040 or 70.05.035, if any, shall:

38 (1) Enforce the public health statutes of the state, rules of the  
39 state board of health and the secretary of health, and all local



1 health rules, regulations and ordinances within his or her  
2 jurisdiction including imposition of penalties authorized under RCW  
3 70A.125.030 and 70A.105.120, the confidentiality provisions in RCW  
4 70.02.220 and rules adopted to implement those provisions, and filing  
5 of actions authorized by RCW 43.70.190;

6 (2) Take such action as is necessary to maintain health and  
7 sanitation supervision over the territory within his or her  
8 jurisdiction;

9 (3) Control and prevent the spread of any dangerous, contagious  
10 or infectious diseases that may occur within his or her jurisdiction;

11 (4) Inform the public as to the causes, nature, and prevention of  
12 disease and disability and the preservation, promotion and  
13 improvement of health within his or her jurisdiction;

14 (5) Prevent, control or abate nuisances which are detrimental to  
15 the public health;

16 (6) Attend all conferences called by the secretary of health or  
17 his or her authorized representative;

18 (7) Collect such fees as are established by the state board of  
19 health or the local board of health for the issuance or renewal of  
20 licenses or permits or such other fees as may be authorized by law or  
21 by the rules of the state board of health;

22 (8) Inspect, as necessary, expansion or modification of existing  
23 public water systems, and the construction of new public water  
24 systems, to assure that the expansion, modification, or construction  
25 conforms to system design and plans;

26 (9) Take such measures as he or she deems necessary in order to  
27 promote the public health, to participate in the establishment of  
28 health educational or training activities, and to authorize the  
29 attendance of employees of the local health department or individuals  
30 engaged in community health programs related to or part of the  
31 programs of the local health department; and

32 (10) Act in accordance with section 2 of this act concerning  
33 education modalities during COVID-19.

34 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of  
36 the state government and its existing public institutions, and takes  
37 effect immediately.

1        NEW SECTION.    **Sec. 8.**    (1) This act expires upon the termination  
2 of the state of emergency under proclamation 20-05 and any subsequent  
3 state of emergency issued pertaining to COVID-19 in accordance with  
4 RCW 43.06.210.

5        (2) The governor shall provide written notice of the termination  
6 date of the state of emergency under proclamation 20-05 and any  
7 subsequent state of emergency issued pertaining to COVID-19 to  
8 affected parties, the chief clerk of the house of representatives,  
9 the secretary of the senate, the office of the code reviser, and  
10 others as deemed appropriate by the governor.

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