

**Fisheries, Ecology & Parks
Committee**

HB 3135

Brief Description: Implementing an area-wide soil contamination initiative.

Sponsors: Representatives Upthegrove and Schual-Berke.

Brief Summary of Bill

- Defines area-wide soil contamination as low to moderate levels of soil contamination dispersed across a large geographic area.
- Directs the Department of Ecology to establish an area-wide soil contamination initiative (Initiative) including public education and outreach, and financial assistance for eligible properties to evaluate, test and cleanup contamination.
- Appropriates \$1.5 million from the Local Toxics Account to the Department to implement the Initiative.

Hearing Date: 2/19/04

Staff: Jeff Olsen (786-7157).

Background:

The Legislature provided \$1,200,000 in the Operating budget (Chapter 371, Laws of 2002) for the Department of Ecology (Department), in conjunction with affected local governments, to address emergent area-wide soil contamination issues. The Department 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 state Model Toxics Control Act (MTCA) and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42. U.S.C. Sec. 9601 *et seq.*) (CERCLA) require sites contaminated with hazardous materials to be cleaned up by liable parties. The MTCA is carried out by the Department and CERCLA is carried out by the United States Environmental Protection Agency. The combined effect of CERCLA and MTCA is 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.

The Department has primary responsibility for hazardous waste cleanup under MTCA. Its duties include: (1) investigating and prioritizing cleanup sites; (2) providing technical assistance to a potentially liable party desiring to perform cleanups; (3) setting cleanup standards for hazardous substances; and (4) requiring or undertaking cleanups where appropriate. The Department is also granted enforcement authority, including the ability to enter property, enter into settlements, file actions or issue orders to compel cleanup, and impose civil penalties and seek recovery of state cleanup costs.

Summary of Bill:

The Department, in cooperation with the Department of Health, the Department of Agriculture, the Department of Community, Trade, and Economic Development, and local governments must implement a broad-based area-wide soil contamination education and awareness campaign. The education campaign must provide information regarding the locations where area-wide soil contamination is most likely to occur, the health risks associated with exposure to area-wide soil contamination, information on how to conduct property evaluations and soil samples, and measures a person can take to reduce exposure to contamination.

The Department must implement an Area-wide Soil Contamination Initiative (Initiative) to minimize the potential for exposure to contamination and protect public health. In implementing the Initiative, the Department must identify area-wide soil contamination zones. Area-wide soil contamination is defined as low to moderate levels of soil contamination dispersed across a large geographic area. Low to moderate soil contamination means arsenic concentrations of up to 100 milligrams per kilogram, and lead concentrations ranging from 500 to 700 milligrams per kilogram. Within the identified zones, the Department must conduct evaluations of child-use areas and conduct soil samples on warranting additional analysis.

Persons owning eligible properties within an area-wide contamination zone may volunteer to participate in the Initiative. Eligible properties include private residences and child-use areas, such as public parks, public schools, and public and private day care facilities. The Department must assist eligible property owners by conducting qualitative evaluations, testing soils, and developing site-specific public health plans. Site-specific public health plans include measures developed to reduce exposure and protect public health including individual protective measures, installing protective barriers, removal and replacement of soil, tilling or blending of soil, or other remedial actions. For properties requiring cleanup, the Department may provide up to 75 percent of the costs for private residences, and up to 100 percent of the costs for child-use areas.

The Department must also establish an enforcement forbearance policy for eligible property owners choosing to participate in the Initiative. Under the enforcement forbearance policy, owners of eligible property implementing site-specific public health plans would not be subject to enforcement actions under existing toxic cleanup laws. However, for certain properties having high levels of contamination or ground water contamination, existing cleanup regulations would apply. When the existing cleanup regulations do apply, the Department, subject to available funding, must provide financial assistance to eligible property owners, and may not initiate enforcement actions due to insufficient funding.

The Department must also obtain additional scientific information on exposure to arsenic and lead, and assist local governments in mapping area-wide soil contamination areas. In addition,

the Department shall work with the Department of Social and Health Services to develop a child care certification program, and provide financial assistance for soil testing for new construction of public child-use areas. The Department must amend the State Environmental Policy Act checklist to address area-wide soil contamination.

Appropriation: \$1,500,000 from the Local Toxics Control Account.

Fiscal Note: Not requested.

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