

**2SSB 5125 - S AMD 296**

By Senator Kohl-Welles

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION.   **Sec. 1.** The legislature finds that elevated levels  
4 of arsenic and lead are present in soil in some areas of Washington,  
5 including the Tacoma smelter plume zone. This contamination primarily  
6 has three historical sources: Air emissions from metal smelters,  
7 application of lead arsenate pesticides, and combustion of leaded  
8 gasoline. Unlike contamination in most previously recognized  
9 contaminated sites, this contamination tends to be distributed over a  
10 wide geographic area and in a relatively thin layer near the ground  
11 surface.

12       Exposure to high levels of arsenic can cause more than thirty  
13 distinct health effects, including nervous system damage, increased  
14 blood pressure, heart attack, stroke, and cancer of the bladder, lung,  
15 skin, and other organs. Lead can affect many parts of the body,  
16 causing health effects that include increased blood pressure and kidney  
17 and brain damage. Although both children and adults can be adversely  
18 affected by lead poisoning, it is a particular concern for young  
19 children. Arsenic and lead are both considered persistent  
20 contaminants, meaning that they bind strongly to soil and usually  
21 remain in the environment without breaking down or losing their  
22 toxicity, and thus can be a source of exposure for many decades.  
23 Because children, particularly young children, are more vulnerable to  
24 health effects from exposure to high levels of arsenic and lead, it is  
25 necessary and appropriate that state and local health agencies provide  
26 a focused program in the Tacoma smelter plume zone upon the health  
27 risks posed at child use areas in schools, parks, and day-care  
28 settings.

29       Therefore, it is the purpose of this chapter to create the safe  
30 playground soils program in the Tacoma smelter plume zone, through

1 which the state and local health jurisdictions will provide technical  
2 and financial assistance to owners of facilities having child use areas  
3 that may contain soils with elevated levels of heavy metals, and if  
4 necessary, to require soil testing.

5 The legislature further declares that the objective of the safe  
6 playground soils program is to obtain comprehensive information on the  
7 presence of heavy metals in child use areas in the Tacoma smelter plume  
8 zone, and to ensure that such information is made available to, and in  
9 some circumstances specifically provided to, parents of children  
10 attending or using the facility and staff members working at the  
11 facility. It is the underlying premise of the safe playground soils  
12 program that comprehensive and high quality data and analysis, shared  
13 with all interested persons, will facilitate timely and effective  
14 response measures to protect the health of children in the Tacoma  
15 smelter plume zone.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter and section 12 of this act unless the context  
18 clearly requires otherwise.

19 (1) "Action level" means a soil concentration of a heavy metal  
20 expressed in milligrams of heavy metal per kilogram of soil, that the  
21 director of the department determines by rule is at a sufficiently low  
22 level and distributed in such a way that public health may be protected  
23 through implementation of best management practices.

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

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

31 (4) "Heavy metals" means arsenic and lead. The department may  
32 include by rule, additional heavy metals in this definition with regard  
33 to specific activities of the safe playground soils program where it  
34 determines that comparable public health benefits may be achieved by  
35 applying the same testing and response measures to address  
36 contamination from such metals.

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

1 (6) "Safe playground soils program" means the program created in  
2 section 3 of this act.

3 (7) "Tacoma smelter plume zone" means the area of potential heavy  
4 metal deposition to soils from the Tacoma smelter, generally  
5 encompassing portions of King, Pierce, Kitsap, and Thurston counties.

6 NEW SECTION. **Sec. 3.** (1) The safe playground soils program is  
7 hereby created, applying exclusively in the Tacoma smelter plume zone  
8 and consisting of the elements described in this chapter and section 12  
9 of this act. The department shall by rule define the boundaries of the  
10 Tacoma smelter plume zone upon available information no later than July  
11 1, 2006.

12 (2) The department shall administer the safe playground soils  
13 program with the assistance of the department of health and local  
14 health jurisdictions. The objective of the program is to maximize the  
15 reduction of health risks arising from the exposure of people,  
16 particularly young children, to heavy metals in soils located in child  
17 use areas within the Tacoma smelter plume zone. The department shall  
18 implement the program through coordinated child use area testing,  
19 reporting of test results, and developing and implementing of response  
20 measures where action levels are exceeded. The department may, through  
21 an interagency agreement, authorize the department of health or any  
22 local health jurisdiction to administer any activity in the program  
23 that is not otherwise assigned to the department of health or local  
24 health jurisdictions by this chapter or section 12 of this act.

25 (3) The department may, through an interagency agreement, allocate  
26 a portion of the funds provided in this chapter to other state agencies  
27 to develop procedures and expertise needed to implement specific  
28 elements of the safe playground soils program.

29 NEW SECTION. **Sec. 4.** (1) The agencies administering the grant  
30 element of the safe playground soils program under section 5 of this  
31 act shall use maximum efforts to notify all facilities with child use  
32 areas within the Tacoma smelter plume zone of the program and the  
33 availability of grants. The agencies shall encourage facility owners  
34 to conduct soil testing within child use areas if tests have not  
35 already been conducted.

1 (2) Not later than January 1, 2006, and January 1, 2008, the  
2 department shall provide reports to the governor and appropriate  
3 committees of the house of representatives and senate regarding the  
4 extent of testing conducted in child use areas within the Tacoma  
5 smelter plume zone, including tests conducted with grants and other  
6 testing.

7 (3) Not later than July 1, 2009, the department and the department  
8 of health shall jointly assess the level of testing of child use areas  
9 within the Tacoma smelter plume zone. If the departments determine  
10 that soil tests have been conducted at less than eighty percent of the  
11 child use areas within the Tacoma smelter plume zone, the department of  
12 health shall adopt a rule no later than December 31, 2010, that  
13 requires soil tests to be conducted within the Tacoma smelter plume  
14 zone.

15 NEW SECTION. **Sec. 5.** (1) The department shall provide grants  
16 through the local toxics control account to local health jurisdictions  
17 for testing soils at child use areas within the Tacoma smelter plume  
18 zone for the presence of heavy metals.

19 (2) In areas within the Tacoma smelter plume zone where the local  
20 health jurisdiction elects not to conduct soil testing at child use  
21 areas, the department shall test soils when requested by the owners of  
22 facilities with child use areas.

23 (3) The department shall actively publicize the safe playground  
24 soils program, including the grant element, and solicit requests for  
25 testing with the objective of obtaining test results expeditiously and  
26 implementing best management practices where action level exceedances  
27 are found. The department and local health jurisdictions shall act  
28 expeditiously on requests for soil testing.

29 (4) For the biennium ending June 30, 2007, if total soil testing  
30 requests and costs of administering the safe playground soils program  
31 exceed the amounts appropriated for this purpose, the department shall  
32 request an additional appropriation at the next session of the  
33 legislature sufficient to satisfy these needs.

34 NEW SECTION. **Sec. 6.** (1) The results of a soil test of a child  
35 use area within the Tacoma smelter plume zone shall be made available  
36 upon request by the facility owner to parents of children attending or

1 visiting the facility and staff members working at the facility. The  
2 facility owner shall use reasonable measures to inform parents of  
3 children attending or visiting the facility and staff members working  
4 at the facility of the existence of test results, including posting of  
5 the information on the facility's web site, if the facility maintains  
6 a web site.

7 (2) Where soil tests indicate that the child use area contains  
8 soils exceeding action levels, the facility owner shall notify parents  
9 of children attending or visiting the facility and staff members  
10 working at the facility of the results and actions that the owner is  
11 planning in response. The facility owner shall also provide the test  
12 results to the department, which shall forward the information to the  
13 local health jurisdiction. With respect to publicly or privately owned  
14 parks, the park owner shall notify staff members and obtain guidance  
15 from the local health jurisdiction as to the means to notify potential  
16 users of the park facility.

17 (3) The owners of facilities with child use areas shall permit  
18 parents of children attending or visiting the facility to obtain soil  
19 samples for soil testing. Facility owners may impose reasonable  
20 conditions on access for obtaining soil samples, and may require that  
21 a split sample be provided to them.

22 NEW SECTION. **Sec. 7.** (1) In consultation with the department of  
23 health, the department shall adopt best management practice guidelines  
24 for facilities within the Tacoma smelter plume zone having elevated  
25 levels of heavy metals in child use area soils. The guidelines shall  
26 recommend a range of alternatives considering the concentration,  
27 extent, and location of contamination and the nature and frequency of  
28 child use of the area.

29 (2) The department may provide grants to local health jurisdictions  
30 for technical assistance to owners of facilities with child use areas  
31 to implement best management practices.

32 (3) The department may provide grants to owners of facilities with  
33 child use areas to implement best management practices pursuant to  
34 plans developed under section 8 of this act.

35 NEW SECTION. **Sec. 8.** (1) The owner of a facility with a child use  
36 area within the Tacoma smelter plume zone for which soil tests indicate

1 the presence of heavy metals exceeding action levels shall implement  
2 best management practices consistent with the guidelines adopted under  
3 section 7 of this act. Within ninety days of receipt of the soil  
4 tests, the facility owner shall inform the department in writing of the  
5 owner's intended plan for implementing best management practices. The  
6 plan shall also be made available to the parents of children attending  
7 or visiting the facility and staff members working at the facility.

8 (2) A facility owner completing implementation of best management  
9 practices shall inform the department in writing and may request that  
10 the department provide a recognition of voluntary cleanup letter under  
11 section 9 of this act. Information regarding the implementation of  
12 best management practices shall be made available to the parents of  
13 children attending or visiting the facility and staff members working  
14 at the facility.

15 NEW SECTION. **Sec. 9.** The owner of a facility with a child use  
16 area within the Tacoma smelter plume zone that implements best  
17 management practices may request that the department issue a  
18 recognition of voluntary cleanup letter. The department may issue the  
19 letter where it concludes, based upon documentation submitted by the  
20 facility and any site visits and additional analysis that the  
21 department may choose to conduct, that the facility owner has  
22 implemented best management practices consistent with the guidelines  
23 adopted under section 7 of this act. The department may charge a fee  
24 for the department's costs reasonably attributable to reviewing the  
25 request and issuing the letter.

26 NEW SECTION. **Sec. 10.** Nothing in this chapter or section 12 of  
27 this act is intended to limit the authority of the department or other  
28 agencies to require actions to address soil contamination of child use  
29 areas within the Tacoma smelter plume zone under other laws.

30 NEW SECTION. **Sec. 11.** This chapter does not apply to agricultural  
31 lands.

32 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.105D  
33 RCW to read as follows:

34 (1) The department shall establish a policy regarding enforcement

1 of this chapter through orders to owners of facilities implementing  
2 best management practices at child use areas within the Tacoma smelter  
3 plume zone under chapter 70.-- RCW (sections 1 through 11 of this act).  
4 The policy shall establish the primary objective of reducing exposure  
5 of children to heavy metals in soils through the testing and action  
6 steps of chapter 70.-- RCW (sections 1 through 11 of this act), rather  
7 than the enforcement authorities of this chapter.

8 (2) The policy shall not apply:

9 (a) If the facility owner fails to complete implementation of best  
10 management practices in a timely manner as determined by the  
11 department;

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

15 (c) To hazardous substances not included within the best management  
16 practices plan developed under section 8 of this act, or to areas  
17 within the facility that are not addressed in the plan; or

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

20 (3) The policy in this section shall not affect the facility  
21 owner's option to pursue and reach a settlement agreement under RCW  
22 70.105D.040. It also shall not affect the facility owner's election to  
23 conduct a voluntary cleanup or to request a no further action letter  
24 from the department under the authority of this chapter.

25 (4) Except as expressly provided in this section, nothing in  
26 chapter 70.-- RCW (sections 1 through 11 of this act) affects or limits  
27 the provisions of this chapter.

28 (5) The definitions in section 2 of this act apply in this section.

29 NEW SECTION. **Sec. 13.** Sections 1 through 11 of this act  
30 constitute a new chapter in Title 70 RCW.

31 NEW SECTION. **Sec. 14.** The sum of one million dollars, or as much  
32 thereof as may be necessary, is appropriated from the state toxics  
33 control account to the department of ecology for the biennium ending  
34 June 30, 2007, to carry out the purposes of this act."

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1        On page 1, line 1 of the title, after "areas;" strike the remainder  
2 of the title and insert "adding a new section to chapter 70.105D RCW;  
3 adding a new chapter to Title 70 RCW; and making an appropriation."

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