H-3309.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2547**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Pollet, Farrell, Senn, Orwall, Walkinshaw, Kuderer, McBride, Ormsby, Gregerson, and Bergquist

AN ACT Relating to ensuring that recreational facilities with synthetic turf materials are not a hazard to public health; amending RCW 43.21B.110 and 43.21B.110; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that synthetic turf fields are currently constructed using material from used tires. Used tires often contain a variety of hazardous substances that are widely acknowledged to pose a danger to public health. The legislature intends that children should not be exposed to levels of hazardous substances at playgrounds and playing fields that create higher risk than the state allows from exposures at contaminated sites where a toxic or hazardous substance has been released. When an industrial site contains high levels of these chemicals, in order to protect public health the operator of that site is required to clean it up by removing the hazardous substances. Nevertheless, materials containing high levels of these hazardous substances are currently being used for recreational facilities without any consideration of the associated health risks posed by frequent exposure by children, athletes, and others that frequently use synthetic turf facilities. Unfortunately, anecdotal and unpublished reports have also begun to emerge that certain high-exposure population groups, including soccer goalies, may suffer higher rates of cancer than the general population. Currently, these reports have not been able to be more thoroughly evaluated because the state and other governments have not yet devoted sufficient resources and attention to tracking and corroborating the health risks associated with synthetic turf facilities.

(2) In light of the emerging evidence that synthetic turf fields containing used tire material threaten the health of children and the public, it is the intent of the legislature to:

(a) Establish reasonable procedures for the testing of used tire material used in recreational facilities to protect against the toxic and cancer-causing releases of hazardous substances;

(b) Establish a warning system for parents and other recreational facility users regarding the possible health risks associated with the use of the synthetic turf at the facility; and

(c) Collect additional information about the health risks associated with use of synthetic turf facilities.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Hazardous substance" has the same meaning as defined in RCW 70.105D.020.

(3) "Manufacturer" means any person that:

(a) Produces synthetic turf that contains ground or crumb rubber from waste tires and that is sold or offered for sale in or into the state;

(b) Is an importer or domestic distributor of a synthetic turf sold or offered for sale in or into the state; or

(c) Constructs or installs fields, playgrounds, or other recreational facilities that contain synthetic turf that contains ground or crumb rubber from waste tires.

(4) "Reasonable maximum exposure" means the highest exposure that is reasonably expected to occur for a person as a result of activity at a field, playground, or recreational facility with synthetic turf or where synthetic turf materials have migrated.

(5) "Recreational facility operator" means any public or private entity that makes available for public use a field, playground, or other recreational facility that contains synthetic turf.

(6) "Synthetic turf" means any material or composition that contains ground or crumb rubber from waste tires and that is used to cover or surface a field, playground, or other recreational facility.

NEW SECTION. **Sec.**  (1) A person may not construct, install, replace, refill, or otherwise deploy synthetic turf for use in a field, playground, or recreational facility unless the manufacturer demonstrates the safety of the synthetic turf to the department using the testing protocol established under this section based on the standards described in subsections (2) and (3) of this section.

(2) A manufacturer demonstration of the safety of synthetic turf must include test results from an independent laboratory certified under RCW 43.21A.230 that indicate that the synthetic turf does not cause exposures that would exceed the acceptable risks from releases at toxic waste sites subject to the model toxics control act, chapter 70.105D RCW, by releasing:

(a) An individual hazardous substance at a level associated with an excess cancer risk rate of greater than one in one million;

(b) A combination of hazardous substances at levels associated with an excess cancer risk rate of greater than one in one hundred thousand; or

(c) A hazardous substance at a concentration in which acute or chronic toxic effects on human health exceed a hazard quotient of one, as determined by the rules adopted by the department pursuant to RCW 70.105D.030.

(3) A manufacturer demonstration of the safety of synthetic turf must include test results from an independent laboratory certified under RCW 43.21A.230 that indicate that the synthetic turf does not release lead, cadmium, or phthalates at levels that exceed the allowable limits for children's products under RCW 70.240.030.

NEW SECTION. **Sec.**  (1) The department and department of health shall establish a synthetic turf safety advisory committee. The synthetic turf safety advisory committee membership must include, but is not limited to:

(a) Independent scientists;

(b) Health risk professionals;

(c) Persons with expertise in lab testing and environmental exposure protocols;

(d) Representatives of multiple nonprofit organizations with expertise in consumer exposure to toxic substances; and

(e) The parents or legal guardians of minors who use fields, playgrounds, or recreational facilities.

(2) The department of health, in consultation with the department, shall adopt by rule testing procedures for determining the safety of synthetic turf. In adopting testing procedures under this section, the department and the department of health must consult the synthetic turf safety advisory committee formed in subsection (1) of this section.

(3) The testing procedures adopted by the department of health must:

(a) Replicate the use conditions for the synthetic turf, including but not limited to reasonable heat, friction, tire crumb fill displacement, and longevity conditions. The reasonable use conditions must also account for other synthetic turf use scenarios that generate high levels of fine particulate matter, as the term "fine particulate" is defined in RCW 70.94.030, or otherwise render fine particulate matter airborne and susceptible to respiration by synthetic turf users; and

(b) Replicate reasonable maximum exposure scenarios and pathways for high-frequency users of synthetic turf fields, playgrounds, and other recreational facilities, including but not limited to exposure pathways for young children at synthetic turf playgrounds and youth participating in organized recreational sports that require high levels of direct contact with synthetic turf.

NEW SECTION. **Sec.**  (1) A recreational facility operator must post a health advisory warning adjacent to any field, playground, or recreational facility with synthetic turf that has not been subject to a safety determination under section 3 of this act. The warning must inform potential users of the synthetic turf that:

(a) Hazardous substances that are toxic or that cause cancer may exist in the synthetic turf; and

(b) Users of the turf may be exposed to unsafe levels of hazardous substances by ingesting or breathing particles released from the synthetic turf.

(2) The advisory warning must include recommendations for synthetic turf users to minimize health risks associated with use of the synthetic turf field, including recommendations for preventing exposure to hazardous substances, avoiding heat exhaustion, preventing the transport and home exposure to used tire materials, and special precautions to be taken during the use of the synthetic turf by young children.

(3) The department of health may adopt rules to implement this section, including rules that establish the content and placement of the health advisory warning signage. In adopting rules under this section, the department of health must consult the synthetic turf safety advisory committee established pursuant to section 4 of this act.

NEW SECTION. **Sec.**  (1) The department of health shall establish a registry to track the incidence of cancer and lung diseases among high-frequency users of synthetic turf fields, playgrounds, and recreational facilities or highly exposed population groups. The department of health shall adopt rules as to what types of cancer and lung disease must be tracked by the registry, who must report to the registry, and the form and timing of reports to the registry.

(2) By December 1, 2019, the department of health must submit a report to the appropriate environmental and health committees of the legislature consistent with RCW 43.01.036 regarding the health risks associated with the use of synthetic turf fields. The report must include the following:

(a) An analysis of data from the registry in subsection (1) of this section;

(b) A review of research published in academic journals, by the federal government, and by other states on the health risks and effects related to the use of synthetic turf;

(c) An analysis of the synthetic turf exposure risks based on age group, particular exposure pathways, and longevity or frequency of exposures;

(d) An analysis of published studies on alternative artificial recreational field surfaces that do not use waste tires and the identification of any safer alternatives to used tire material in artificial recreational surfaces; and

(e) An assessment, conducted in conjunction with the department of ecology, of the safety, environmental impacts, cost, and feasibility of alternatives to the use of tire crumb from used tires in synthetic turf.

(3) The department of health must periodically provide updated information to the appropriate committees of the legislature as additional pertinent information based on Washington data, federal research, or research conducted by other states becomes available.

NEW SECTION. **Sec.**  (1) The department may issue an order to a recreational facility operator or manufacturer in violation of the requirements of this chapter requiring either immediate compliance or compliance within a specified period of time. Any recreational facility operator or manufacturer that fails to take corrective action as specified in an order under this section is liable for a civil penalty not to exceed ten thousand dollars for each day of continued noncompliance.

(2) Penalties and orders issued by the department under this section are appealable to the pollution control hearings board pursuant to chapter 43.21B RCW.

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 33 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 34 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Section 8 of this act expires June 30, 2019.

NEW SECTION. **Sec.**  Section 9 of this act takes effect June 30, 2019.

**--- END ---**