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**SUBSTITUTE HOUSE BILL 1554**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Doglio, Pollet, Fitzgibbon, Berry, Ramel, Orwall, Ryu, Fosse, Kloba, Macri, and Duerr)

AN ACT Relating to reducing public health and environmental impacts from lead; amending RCW 43.21B.110 and 43.21B.300; adding a new section to chapter 43.70 RCW; adding a new section to chapter 70A.15 RCW; adding a new chapter to Title 70A RCW; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that even though lead is a widely recognized hazard to human health and to the environment, and leaded motor vehicle gasoline was phased out across the United States decades ago, leaded gasoline remains in widespread use at general aviation airports by piston engine noncommercial aircraft. Recent studies have found elevated levels of lead in the blood of residents, and particularly worryingly in the blood of children residing in general aviation airport communities, for whom lead is especially harmful to their development. There is consensus among the medical and scientific communities that the levels detected in children living around general airports similar to those in Washington are hazardous. The national academies of sciences, engineering, and medicine in 2015 concluded that lead "is a well-known air pollutant that can lead to a variety of adverse health impacts, including neurological effects in children that lead to behavioral problems, learning deficits, and lowered IQ."

(2) The United States environmental protection agency has recently taken steps towards making an endangerment finding that may eventually lead, through a complex federal regulatory process involving the United States federal aviation administration, to the elimination of lead from aviation gasoline. That unfolding federal process is too slow to adequately protect those currently living near general aviation airports from the harms of lead.

(3) Therefore, it is the intent of the legislature to take steps to mitigate public health and environmental harms caused by the use of leaded gasoline at airports, and to expedite the transition to the use of unleaded aviation gasoline.

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

(1) "Airport" has the same meaning as defined in RCW 47.68.020.

(2) "Airport operator" means a county, city, government agency, port district, or other person that owns or operates an airport.

(3) "Aviation gasoline" means gasoline sold for use in an aircraft.

(4) "Aviation retail establishment" means any public or private entity who sells aviation gasoline or offers or otherwise makes available aviation gasoline to a customer, including other businesses or government entities, for use in this state.

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

(6) "Leaded aviation gasoline" means aviation gasoline to which lead has been intentionally added.

(7) "Overburdened community" has the same meaning as in RCW 70A.02.010.

(8) "Pertinent air quality regulator" means an air pollution control authority formed under chapter 70A.15 RCW in areas where an authority has been activated, or the department in areas in which an air pollution control authority has not been activated.

(9) "Unleaded aviation gasoline" means aviation gasoline to which no lead has been intentionally added.

(10) "Vulnerable population" has the same meaning as in RCW 70A.02.010.

NEW SECTION. **Sec.**  (1)(a) The department of transportation, in consultation with the department, must develop simple guidance that can easily and quickly be implemented by airport operators to minimize public health and environmental exposures to lead associated with airport operations. It is the intent of the legislature for this guidance, in the form of a document, to prioritize actions that can be taken by airport operators most quickly and easily to achieve meaningful reductions in lead exposures from airport operations, and with priority given to actions capable of being implemented in the shorter term and that will not be unduly costly or time-consuming to implement, in light of the expectation that alternative lead-free aviation gasoline is anticipated to become more widely available within a decade. The guidance document must be based upon the 2021 consensus study report of the national academies of sciences, engineering, and medicine related to options for reducing lead emissions from piston-engine aircraft. The department of transportation may consult with the department of health and local air authorities activated under chapter 70A.15 RCW in the development of guidance under this section.

(b) The department of transportation must publish initial guidance to airport operators by July 1, 2024.

(c) The department of transportation must review the guidance required in (b) of this subsection and publish updated guidance under this section by July 1, 2026, and may periodically update its review and guidance thereafter.

(2) In developing the guidance under subsection (1) of this section, the department of transportation must include high-priority actions that airport operators will be able to expeditiously implement and that will achieve the most significant lead exposure reductions, including:

(a) Methods to increase the distance between run-up areas and public areas on or off the airport and recommendations for how an airport operator may increase the size of run-up areas;

(b) Mechanisms to eliminate the cast-off of leaded aviation gasoline, which must include the provision of a container for the deposit of unwanted gasoline from preflight sampling, and education and signage to inform airport users of the prohibition on spilling unwanted sampled gasoline on the ground; and

(c) The establishment of standardized time limits on airport engine run-up and idling.

(3) In addition to the lead exposure reduction provisions included in subsection (2) of this section, the department of transportation may include in the initial or updated guidance other high-priority actions to:

(a) Minimize airport employee exposures;

(b) Minimize releases of leaded aviation gasoline caused by refueling and maintenance activities at the airport, including processes used to store and dispense aviation gasoline at the airport; and

(c) Educate and financially incentivize airport fuel consumers that have the option to purchase and use unleaded aviation gasoline at the airport to do so.

NEW SECTION. **Sec.**  (1) By November 1, 2024, or within four months of the initial publication of guidance by the department under section 3 of this act, whichever is later, each airport operator must submit to the pertinent air quality regulator and begin implementing a plan to implement best practices identified by the national academies of sciences, engineering, and medicine designed to minimize environmental impacts and public health risks associated with leaded aviation gasoline use at general aviation airports. Each airport operator must update its plan by the November 1st following an updated publication of the guidance issued under section 3 of this act. At a minimum, each airport operator must include in its plan:

(a) A description of how the airport operator plans to implement the operational and logistical contents of the guidance issued under section 3 of this act, including a description of how the airport operator will ensure that airport users adhere to the standards established to reduce environmental and public health exposures to lead; and

(b) A plan and budget for the financing of any needed fueling infrastructure improvements at the airport to allow for the airport to begin supplying unleaded aviation gasoline.

(2) By December 1, 2025, and each December 1st thereafter, each airport operator must provide a brief status report to the pertinent air quality regulator regarding its implementation of the plan under this section, including the status of planning and investments to facilitate the supply of unleaded aviation gasoline at the airport.

(3) The requirements of this section do not apply to the operator of an airport at which leaded aviation gasoline is not sold, distributed, or otherwise made available. An airport operator at which leaded aviation gasoline ceases to be sold, distributed, or otherwise made available must notify the pertinent air quality regulator within 30 days of the cessation of the use of leaded aviation gasoline at the airport.

(4) An airport operator may temporarily suspend the implementation of the guidance under this section in the event of a federal, state, or local declaration of an emergency or a disaster.

NEW SECTION. **Sec.**  (1) The pertinent air quality regulator, in consultation with the department of transportation and the department of health, must offer technical assistance consistent with RCW 43.21A.085 and 43.21A.087 to a person that has not submitted a plan that meets the requirements of section 4 of this act or that does not implement the plan submitted to the department under section 4 of this act in the manner described in the plan.

(2) The department may adopt rules to implement, administer, and enforce the requirements of this section. An air pollution control authority formed under chapter 70A.15 RCW must enforce the requirements of this chapter in areas within its jurisdiction and the department must enforce the requirements of this chapter in areas of the state in which no air pollution control authority has been formed under chapter 70A.15 RCW.

(3) A person who remains in violation of the requirements of section 4 of this act 30 days after the offer of technical assistance under subsection (1) of this section is subject to a civil penalty of up to $10,000 per day of continued noncompliance. In setting penalties, the pertinent air quality regulator may consider the proximity of the airport to overburdened communities identified by the department or vulnerable populations.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

The department must update its blood lead testing guidance for health care providers related to children living near airports at which aviation gasoline is used. The update must include children at risk of lead exposure due to airport operations among the high-risk populations broadly recommended for a blood lead test, without respect to the clinical judgment of the health care provider. For purposes of determining which children are at highest risk of lead exposure due to airport operations, the department must consider including children living, attending day care, preschool, or school within one kilometer of a general aviation airport, among other populations. The department must conduct outreach with and provide information to health care providers about the guidance.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.15 RCW to read as follows:

An activated authority has a duty to enforce the requirements of chapter 70A.--- RCW (the new chapter created in section 10 of this act) in the areas within its jurisdiction.

**Sec.**  RCW 43.21B.110 and 2022 c 180 s 812 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 70A.15 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, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 5 of this act, 76.09.170, 77.55.440, 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, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 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 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(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 70A.205.145.

(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, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(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.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

(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 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, 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.300 and 2022 c 180 s 813 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 5 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority 30 days after the date of receipt by the person penalized of the notice imposing the penalty or 30 days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within 30 days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

**--- END ---**