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HOUSE BILL 1442

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State of Washington

67th Legislature

2021 Regular Session

By Representative Chase

1 AN ACT Relating to epidemic and pandemic preparedness; amending  
2 RCW 70.26.020; adding new sections to chapter 70.26 RCW; and  
3 repealing RCW 70.26.010, 70.26.030, 70.26.040, 70.26.050, 70.26.060,  
4 and 70.26.070.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.26  
7 RCW to read as follows:

8 (1) The legislature finds that:

9 (a) Current definitions by the world health organization and the  
10 centers for disease control and prevention for epidemic and pandemic  
11 adhere to a narrowly defined criteria that are delineated as  
12 catastrophic and noncatastrophic, novel or variant. Inherent in  
13 "epidemic and pandemic preparedness" is the tenet that epidemic and  
14 pandemic illnesses require a different response than annual, seasonal  
15 influenza or seasonal viral diseases. Current definitions allow for  
16 novel viruses to trigger an epidemic or pandemic label and prompt an  
17 exaggerated response by health jurisdictions. Epidemic and pandemic  
18 planning must take into account the severity of illness, mortality,  
19 and morbidity, caused by disease causing agents or organisms as part  
20 of a response strategy.

1 (i) The world health organization has changed the definitions of  
2 influenza epidemics and influenza pandemics over the last 17 years.  
3 These changes in definition have lowered the threshold for declaring  
4 epidemics and pandemics around the world by national and local health  
5 agencies.

6 (ii) From 2003 to 2009, the world health organization defined an  
7 epidemic brought forth by a type A-influenza virus as following: "An  
8 influenza pandemic occurs when a new influenza virus appears against  
9 which the human population has no immunity, resulting in several,  
10 simultaneous epidemics worldwide with enormous numbers of deaths and  
11 illness."

12 (iii) On May 4, 2009, the world health organization altered the  
13 definition to read as follows: "An influenza pandemic may occur when  
14 a new influenza virus appears against which the human population has  
15 no immunity."

16 (iv) The world health organization's definition on February 24,  
17 2010, read: "An influenza pandemic occurs when a new influenza virus  
18 emerges and spreads around the world, and most people do not have  
19 immunity."

20 (v) The centers for disease control and prevention has followed  
21 the world health organization's changes and applied them to their  
22 definitions of epidemic and pandemic in the preparedness plans,  
23 lowering thresholds for health emergency declarations.

24 (vi) On March 24, 2020, the centers for disease control and  
25 prevention published guidelines that substantially altered how cause  
26 of death is recorded exclusively for COVID-19, which had the effect  
27 of quickly raising COVID-19 death rates. By August 23, 2020, the  
28 centers for disease control and prevention was reporting 161,392  
29 deaths under the new COVID-19-only guidelines. If evaluated under the  
30 guidelines used for all other deaths, including deaths where any  
31 other viral infection is present or a factor, the total COVID-19  
32 deaths on August 23 would have been 9,684.

33 (vii) Recommendations from federal, private, state, or  
34 international institutions regarding epidemic or pandemic  
35 definitions, including guidelines on what qualifies as a death due to  
36 an epidemic or pandemic illness, must be reviewed in a representative  
37 manner prior to being accepted by the Washington state department of  
38 health in order to ensure any change will benefit the people of the  
39 state.

1 (viii) Changes in the definitions for epidemics and pandemics and  
2 guidelines for recording of deaths must be reviewed by members of the  
3 department of health, the general public, and members of the medical  
4 community who are not affiliated with the department of health in the  
5 state of Washington to account for the severity of the disease caused  
6 by a virus, transmissibility, the percentage of the population at  
7 risk of severe disease or fatality, and the role the disease or  
8 presence of the pathogen plays in any death.

9 (b) The response to the current outbreak of SARS-COV-2 has been  
10 unprecedented, causing disruptions to the constitutional rights,  
11 livelihoods, and freedoms guaranteed by the United States of America  
12 and Washington state Constitutions.

13 (c) Irreparable harm to the people and businesses in the state  
14 through extended use of blanket isolation, restrictions, and business  
15 and school closures has occurred due to the state of emergency  
16 declaration in 2020 and the implementation of strategies brought  
17 forth by the Washington state department of health. This approach is  
18 not sustainable or repeatable. Lessons learned must be used to create  
19 better strategies moving forward and for future epidemic or pandemic  
20 events.

21 (d) Recommendations regarding how best to avoid infection with  
22 SARS-COV-2 change frequently as new information and data are brought  
23 forth, and recommendations by national, state, and local government  
24 officials are often not based on well-tested scientific information,  
25 risk mitigation strategies, or cost/benefit analysis. Long-term face  
26 mask wearing, sanitizing of surfaces, and social distancing and  
27 restrictions have never been used to the extent or duration they are  
28 now for prevention of the spread of any infection and their  
29 effectiveness and safety when adopted by those in the general public  
30 who are symptom-free is now a matter of scientific debate.

31 (e) The use of PCR tests to define cases and drive responses and  
32 policies has proved highly problematic. Studies have shown false  
33 positives occur dependent upon the timing of the administration of  
34 the test and the number of cycles used to determine a positive  
35 result. It is now widely understood that diagnostic programs that  
36 rely exclusively on PCR tests to define a case are fundamentally  
37 flawed.

38 (i) The use of the number of people positive for a diagnostic  
39 test, that has been incorrectly defined as a "case," regardless of  
40 health status (asymptomatic, symptomatic, hospitalized, or deceased)

1 is counterproductive and does not provide accurate and actionable  
2 information for community health management.

3 (ii) Diagnostic test reporting, recommendations to local health  
4 authorities and government agencies, and decision making by health  
5 authorities must incorporate a balance of illness severity,  
6 prevalence of disease spread, risk mitigation strategies, and cost  
7 and benefit to communities in the reporting.

8 (iii) The Washington state department of health has the duty to  
9 review, analyze, and validate all diagnostic tests for accuracy,  
10 diagnostic usefulness to the medical and laboratory community.

11 (f) Close interactions are necessary for emotional,  
12 psychological, and physical health, as well as for immune health. It  
13 is well-established that individual immune health, natural individual  
14 immunity, and natural herd immunity depend upon frequent and varied  
15 exposures to microbes, including those that are potential pathogens.  
16 The current level of fear, oversanitation, and isolation cannot be  
17 sustained without harm to human health.

18 (g) Existing public health regulations include, but are not  
19 limited to, hand washing, adequate air quality in places of public  
20 accommodation, staying home from work or school when symptomatic,  
21 isolating the sick for diseases of public health significance, and  
22 other long-standing health measures proven to help reduce the spread  
23 of communicable infections, with minimal negative impact on business  
24 and society.

25 (h) No evidence exists that locking down the healthy,  
26 asymptomatic general population alters or affects the spread of a  
27 viral epidemic or pandemic disease. No evidence has been provided by  
28 the world health organization, the centers for disease control and  
29 prevention, and the Washington state department of health that wide-  
30 scale lockdowns or quarantines limit infectivity, morbidity, and  
31 mortality.

32 (i) Historically, epidemics and pandemics have impacted certain  
33 portions of the population more than others. When restrictive public  
34 health measures are used in a blanket fashion with the entire  
35 population rather than in a targeted fashion, the result can be  
36 economic and personal harm that outweighs any potential benefit.

37 (j) Existing public health policies do not include monitoring or  
38 distributing to medical and health professionals and the public  
39 information about nutrient and drug therapies that are rapidly  
40 developed and adopted by frontline and general practitioners in order

1 to prevent infection, prevent severe disease, and reduce fatalities.  
2 State public health agencies have historically deferred to the  
3 federal centers for disease control and prevention and health and  
4 human services for guidance on treatments, but these federal agencies  
5 are slow to recognize and recommend any treatments, requiring levels  
6 of clinical trial evidence that cannot be achieved in time to address  
7 immediate needs during an epidemic or pandemic and save lives.

8 (k) Other than medical facilities such as hospitals, in certain  
9 situations, businesses, premises owners, including schools and  
10 churches, have not historically been required to keep members of the  
11 public from being exposed to airborne viruses, bacteria, and germs.  
12 In Washington, it has historically been the responsibility of  
13 individuals going into public places to avoid exposure to individuals  
14 who may be sick. Individuals who decide to go out into public places  
15 are personally responsible to take steps they feel are necessary to  
16 avoid exposure to or be personally protected from any virus, such as  
17 the common cold or the flu, based on their own health needs and  
18 conditions.

19 (l) The possibility for asymptomatic transmission of airborne  
20 infections has always existed, and such transmission in public  
21 settings is rare. The latest studies show that in household settings,  
22 places of intimate and long-duration exposure, SARS-COV-2  
23 transmission from presymptomatic individuals is just .7 percent, and  
24 from asymptomatic individuals zero percent.

25 (m) It is not practical, reasonable, or sustainable to burden  
26 businesses or premises owners, and society at large, with  
27 restrictions that, if maintained for a sustained period, can cause  
28 grave personal and economic harm, based on fear of the potential for  
29 asymptomatic or presymptomatic transmission, or fear of a chain of  
30 such transmissions.

31 (n) Additionally, the legislature has not delegated to the  
32 executive branch of Washington's government the authority or power to  
33 create new legal duties for businesses or premises owners. In  
34 Washington's system of government, the legislature makes Washington's  
35 laws, and the executive branch enforces those laws.

36 (o) Rights provided by the Washington state Constitution exist  
37 during times of epidemics and pandemics and due process must be  
38 followed.

39 (2) It is therefore the intent of the legislature that improved  
40 epidemic and pandemic preparedness and response plans be developed

1 and implemented by local public health jurisdictions statewide in  
2 order to limit the number of severe illnesses and deaths, preserve  
3 the continuity of essential government and other community services,  
4 and minimize social disruption and economic loss in the event of any  
5 epidemic or pandemic.

6 **Sec. 2.** RCW 70.26.020 and 2006 c 63 s 2 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Department" means the department of health.

11 (2) "Epidemic" means an outbreak of disease with high mortality  
12 and accompanying morbidity when it affects many people in a region at  
13 the same time.

14 (3) "Local health jurisdiction" means a local health department  
15 as established under chapter 70.05 RCW, a combined city-county health  
16 department as established under chapter 70.08 RCW, or a health  
17 district established under chapter 70.05 or 70.46 RCW.

18 ~~((3))~~ (4) "Pandemic" means a global epidemic, and generally  
19 occurs when a new virus or a disease-causing entity or organism  
20 appears in the human population that causes higher than average  
21 mortality and morbidity.

22 (5) "Secretary" means the secretary of the department of health.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.26  
24 RCW to read as follows:

25 The legislature finds that nothing in the Revised Code of  
26 Washington establishes duties upon businesses and premises owners to  
27 ensure that members of the general public will not be exposed to  
28 airborne germs and viruses. Furthermore, such a duty would be so  
29 burdensome so as to make operating them impossible. Therefore, the  
30 legislature declares that orders and recommendations from the  
31 executive branch, from counties and local municipalities, from boards  
32 of health and other agencies, and from any federal government agency,  
33 do not create any new legal duties for purposes of tort liability.  
34 Any such orders and recommendations are presumed to be irrelevant to  
35 the issue of the existence of a duty or breach of a duty.  
36 Furthermore, any such orders and recommendations are presumed to be  
37 inadmissible at trial to establish proof of a duty or breach of a  
38 duty in tort actions.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 70.26

2    RCW to read as follows:

3        (1) To ensure that the state's response to any epidemic or  
4    pandemic is balanced against negative secondary outcomes, the  
5    secretary shall submit preparedness plans, and any proposed response  
6    plans during an outbreak, to governmental agencies whose focus is  
7    relevant to and impacted by such plans for review and the preparation  
8    of impact statements that analyze potential economic and societal  
9    outcomes.

10       (2) Public health measures cannot have a monopoly over society.  
11    The assessment of the impact of a proposed public health response is  
12    fundamentally about balancing its negative effects on the economy and  
13    society with the positive effects in terms of a contribution to the  
14    achievement of well-defined objectives of common interest.

15       (3) Balancing these effects takes into account the impact of the  
16    public health response on the economic and societal welfare of the  
17    state and its citizens. The legislature intends to establish a  
18    balancing test. For that purpose, the following questions shall be  
19    starting points for deliberation:

20        (a) Is there a measurable and definable risk to public health;

21        (b) Are the tools used to measure the risk to public health  
22    validated, reproducible, and verified by the department;

23        (c) Is the severity of the risk to public health sufficient to  
24    enact public health measures;

25        (d) Is the public health measure aimed at a well-defined  
26    objective;

27        (e) Is the public health objective achievable and reasonable;

28        (f) Is the public health measure well-designed to deliver the  
29    objective;

30        (g) Is the public health measure proportionate to the problem  
31    addressed;

32        (h) Is the public health measure designed to be the least  
33    restrictive to the economy and society as possible;

34        (i) Do the benefits of the measure outweigh the risks to economic  
35    and societal health;

36        (j) Does another approach exist to achieve the objective with  
37    less risk to the economy and society;

38        (k) Is the state properly prepared to implement the measure;

39        (l) Is there a clearly defined end goal at which time the measure  
40    would end;

1 (m) Is there a tipping point at which the public health measure's  
2 risk to the economy and society outweigh the benefits; and

3 (n) Is there sufficient protection for the individual  
4 constitutional rights of the people affected by the public health  
5 measures?

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.26  
7 RCW to read as follows:

8 (1) The secretary shall establish requirements and standards,  
9 consistent with any requirements or standards established by the  
10 United States department of health and human services when  
11 appropriate for the situation and needs in Washington, regarding the  
12 development and implementation of local epidemic and pandemic  
13 preparedness and response plans.

14 (2) The secretary shall take steps annually, and during any  
15 outbreak situation, to review new empirical data and ensure that any  
16 test used to determine a "case" of a disease considered to be caused  
17 by a pathogen of interest exhibits and maintains the following in-  
18 field performance evaluation measures: Sensitivity to detect the  
19 pathogen of greater than 95 percent when present, specificity to not  
20 detect the pathogen of greater than 99 percent when absent, with  
21 positive test results being confirmed by independent technology to be  
22 100 percent specific to the pathogen of interest.

23 (3) The secretary shall annually, and during any epidemic or  
24 pandemic, convene a committee of health professionals, including  
25 medical and naturopathic physicians, to discuss and generate a report  
26 on the most current nutrient and drug therapies and other treatment  
27 modalities available for supporting the immune system to help prevent  
28 viral infections and help prevent severe disease. This report shall  
29 be made available to the medical community and the public.

30 (4) The secretary shall ensure that subpopulations most impacted  
31 by any epidemic or pandemic are identified and provided with  
32 appropriate and adequate support, including information about  
33 nutrient and drug preventative and treatment therapies as identified  
34 by the committee defined in subsection (3) of this section, to  
35 address underlying susceptibility factors and exposure protection as  
36 needed.

37 (5) The secretary shall include in any risk-benefit analysis of  
38 public health measures being considered the impact on the economy,  
39 society, and individuals, to ensure minimum impact of public health



1 measures on the general population and to prevent economic, societal,  
2 and personal harm and hardships.

3 (6) To the extent state or federal funds are provided for this  
4 purpose, by November 1, 2021, each local health jurisdiction shall  
5 develop an epidemic and pandemic preparedness and response plan,  
6 consistent with requirements and performance standards established in  
7 subsection (1) of this section, for the purpose of:

8 (a) Defining preparedness activities that should be undertaken  
9 before an epidemic or pandemic occurs that will enhance the  
10 effectiveness of response measures;

11 (b) Describing the response, coordination, and decision-making  
12 structure that will incorporate the local health jurisdiction; the  
13 local health care system; local medical, naturopathic, and  
14 alternative practitioners who provide vital ambulatory care and  
15 thereby reduce the number of severe cases; other local response  
16 agencies; and state and federal agencies during the epidemic or  
17 pandemic;

18 (c) Defining the roles and responsibilities for the local health  
19 jurisdiction, local health care partners, and local response agencies  
20 during all phases of a pandemic;

21 (d) Describing public health interventions in a pandemic response  
22 and the timing of such interventions;

23 (e) Serving as a guide for local health care system partners,  
24 response agencies, and businesses in the development of epidemic and  
25 pandemic response plans; and

26 (f) Providing technical support and information on which  
27 preparedness and response actions are based.

28 (7) Each plan shall be developed based on an assessment by the  
29 local health jurisdiction of its current capacity to respond to  
30 epidemic and pandemic illnesses and otherwise meet department outcome  
31 measures related to infectious disease outbreaks of statewide  
32 significance.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.26  
34 RCW to read as follows:

35 (1) Each local health jurisdiction shall develop its pandemic  
36 preparedness and response plan based on the requirements and  
37 performance standards established under section 5(1) of this act and  
38 an assessment of the jurisdiction's current capacity to respond to an  
39 epidemic or pandemic. The plan shall be developed in consultation

1 with appropriate public and private sector partners, including  
2 departments of emergency management, law enforcement, school  
3 districts, hospitals and medical professionals, medical and  
4 naturopathic physicians, tribal governments, and business  
5 organizations. At a minimum, each plan shall address:

6 (a) Strategies to educate the public about epidemic and pandemic  
7 illnesses and what each person can do to prepare, including: The  
8 adoption of universal infectious disease prevention practices,  
9 improving personal health and wellness habits, proper hygiene,  
10 ensuring adequate levels of nutrients known to directly relate to  
11 illness susceptibility, access to the most recent report on  
12 preventive and treatment therapies by the committee as described in  
13 section 5(3) of this act; complete, accurate, and up-to-date  
14 information on risks and benefits of any licensed or emergency use  
15 authorization vaccine available; and maintaining appropriate  
16 emergency supplies;

17 (b) Strategies to minimize impacts on local businesses, schools,  
18 and churches;

19 (c) Strategies for keeping businesses, schools, and churches open  
20 for all those who choose not to isolate, while supporting those who  
21 do choose to self-isolate because of increased risk of severe  
22 disease;

23 (d) Jurisdiction-wide disease surveillance programs only with  
24 tests meeting the requirements specified in section 5(2) of this act,  
25 coordinated with state and federal efforts, to detect epidemic or  
26 pandemic strains in humans and animals, including health care  
27 provider compliance with reportable conditions requirements and  
28 investigation and analysis of reported illness or outbreaks;

29 (e) Communications systems, including the availability of and  
30 access to specialized communications equipment by health officials  
31 and community leaders, and the use of mass media outlets;

32 (f) Guidance to the general public for locating a practitioner of  
33 their choosing to advise on the utilization of nutrient and drug  
34 therapies for the treatment and prevention of the epidemic or  
35 pandemic illness;

36 (g) Recommendation of nonmedical measures to decrease the spread  
37 of the disease as guided by the epidemiology of the pandemic,  
38 including proper ventilation, air circulation and optimal humidity in  
39 indoor spaces, hand washing, staying home when symptomatic, voluntary  
40 mask wearing in limited and appropriate situations, and voluntary

1 social isolation of those susceptible to severe or fatal disease  
2 during outbreaks;

3 (h) Notification to all citizens of their rights to due process  
4 for any quarantine or any restrictive measure that limits their  
5 freedom of movement and normal activities, such as going to work or  
6 attending school;

7 (i) Medical system mobilization, including improving the linkages  
8 and coordination of emergency responses across health care  
9 organizations, and assuring the availability of adequate facilities  
10 and trained personnel; and

11 (j) The jurisdiction's relative priorities related to  
12 implementation of the activities in this subsection, based on  
13 available funding.

14 (2) To the extent state or federal funds are provided for this  
15 purpose, the department, in consultation with the state director of  
16 emergency management, shall provide technical assistance and disburse  
17 funds as needed, based on the formula developed under section 8 of  
18 this act, to support local health jurisdictions in developing their  
19 epidemic and pandemic preparedness and response plans.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.26  
21 RCW to read as follows:

22 (1) Local health jurisdictions shall submit their pandemic  
23 preparedness and response plans to the secretary by November 1, 2021.  
24 Upon receipt of a plan, the secretary shall approve or reject the  
25 plan. When the plan is determined by the department to comply with  
26 the requirements and integrate the performance standards established  
27 under section 5 of this act, any additional state or federal funding  
28 appropriated in the budget shall be provided to the local health  
29 jurisdiction to support the preparedness response activities  
30 identified in the plan, based upon a formula developed by the  
31 secretary under section 8 of this act. Preparedness and response  
32 activities include but are not limited to:

33 (a) Education, information, and outreach, in multiple languages,  
34 to increase community preparedness and reduce the spread of the  
35 disease should it occur;

36 (b) Development of materials and systems to be used in the event  
37 of an epidemic or pandemic to keep the public informed about the  
38 illness, nutrient and drug therapies for prevention and treatments as

1 described in section 5(3) of this act, the course of the pandemic,  
2 and response activities;

3 (c) Development of the legal documents necessary to facilitate  
4 and support the necessary government response;

5 (d) Training and response drills for local health jurisdiction  
6 staff, law enforcement, health care providers, and others with  
7 responsibilities identified in the plan;

8 (e) Enhancement of the communicable disease surveillance system;  
9 and

10 (f) Development of coordination and communications systems among  
11 responding agencies.

12 (2) Where appropriate, these activities shall be coordinated and  
13 funded on a regional or statewide basis. The secretary, in  
14 consultation with the state director of emergency management, shall  
15 provide implementation support and assistance to a local health  
16 jurisdiction when the secretary or the local health jurisdiction has  
17 concerns regarding a jurisdiction's progress toward implementing its  
18 plan.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.26  
20 RCW to read as follows:

21 The secretary shall develop a formula for distribution of any  
22 federal and state funds appropriated in the omnibus appropriations  
23 act on or before July 1, 2021, to local health jurisdictions for  
24 development and implementation of their epidemic and pandemic  
25 preparedness and response plans. The formula developed by the  
26 secretary shall ensure that each local health jurisdiction receives a  
27 minimum amount of funds for plan development and that any additional  
28 funds for plan development be distributed equitably, including  
29 consideration of population and factors that increase susceptibility  
30 to an outbreak, upon soliciting the advice of the local health  
31 jurisdictions.

32 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.26  
33 RCW to read as follows:

34 The secretary shall:

35 (1) Develop a process for assessing the compliance of each local  
36 health jurisdiction with the requirements and performance standards  
37 developed under section 5(1) of this act at least biannually;

1 (2) By November 15, 2022, report to the legislature on the level  
2 of compliance with the performance standards established under  
3 section 5(1) of this act. The report shall consider the extent to  
4 which local health jurisdictions comply with each performance  
5 standard and any impediments to meeting the expected level of  
6 performance.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.26  
8 RCW to read as follows:

9 Any public health measure by the state that infringes on the  
10 Washington state Constitution or the United States Constitution may  
11 not be enforced.

12 NEW SECTION. **Sec. 11.** The following acts or parts of acts are  
13 each repealed:

- 14 (1) RCW 70.26.010 (Findings—Intent) and 2006 c 63 s 1;
- 15 (2) RCW 70.26.030 (Local preparedness and response plans—  
16 Requirements) and 2006 c 63 s 3;
- 17 (3) RCW 70.26.040 (Local preparedness and response plans—  
18 Consultation with public, private sector—Department to provide  
19 technical assistance and disburse funds) and 2006 c 63 s 4;
- 20 (4) RCW 70.26.050 (Plans to be submitted to secretary for  
21 approval, rejection—Funding—Preparedness and response activities)  
22 and 2006 c 63 s 5;
- 23 (5) RCW 70.26.060 (Secretary to develop a formula for fund  
24 distribution—Requirements) and 2006 c 63 s 6; and
- 25 (6) RCW 70.26.070 (Secretary duties—Report) and 2006 c 63 s 7.

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