
HOUSE BILL 2388

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61st Legislature

2010 Regular Session

By Representatives Moeller, Chase, Pedersen, Appleton, Kagi, Cody, Seaquist, Ormsby, and Roberts

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1 AN ACT Relating to public health financing; amending RCW 43.70.514,
2 43.70.516, 82.08.0293, and 82.12.0293; adding new sections to chapter
3 43.70 RCW; adding a new section to chapter 82.32 RCW; creating a new
4 section; and repealing RCW 43.70.512 and 43.70.522.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that public health is
7 a core function of state government. The local health jurisdictions in
8 Washington state's decentralized public health system depend on a
9 combination of federal, state, and local funding. This funding system
10 can make public health funding unstable on the local level and can
11 adversely affect the public health services available to the citizens
12 of the state. It is therefore the intent of the legislature to help
13 provide local health jurisdictions with a more stable dedicated funding
14 system by providing a dedicated state revenue stream and creating a
15 single account through which all state funding for public health will
16 be distributed. The legislature further intends that local health
17 jurisdictions receiving state funds be held accountable for the use of
18 those funds based on the minimum standards of public health protection
19 in the state's public health improvement plan.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70 RCW
2 to read as follows:

3 (1) The public health improvement account is created in the state
4 treasury. Moneys in the account may be spent only after appropriation.

5 (2) Except as provided in subsection (3) of this section, during
6 the month of January 2011, and every January thereafter, the state
7 treasurer shall distribute the account's annual receipts to each local
8 health jurisdiction in the state to be used for core public health
9 functions of statewide significance. The state treasurer must
10 distribute the moneys required under this subsection as follows:

11 (a) To the extent available, each local health jurisdiction must
12 receive a base level of funding of one hundred thousand dollars.

13 (b) The remainder of the funds to be distributed under this
14 subsection (2) must be distributed among the jurisdictions on a per
15 capita basis.

16 (3) The state treasurer may not distribute funds to a local health
17 jurisdiction under subsection (2)(a) of this section if he or she
18 receives notice from the secretary of health, under RCW 43.70.516, that
19 the jurisdiction is not in substantial compliance with the minimum
20 standards for public health protection established under RCW 43.70.520.
21 The state treasurer must retain funds withheld under this subsection
22 until he or she receives notification from the secretary, under RCW
23 43.70.516, that the jurisdiction has achieved substantial compliance.

24 (4) A local health jurisdiction may use funds provided under this
25 section to supplant other funding sources for public health programs.

26 (5) For purposes of this section:

27 (a) "Per capita basis" means the amount multiplied by the
28 proportion of the population of the jurisdiction in the previous
29 calendar year to the population of the state in the previous calendar
30 year.

31 (b) "Population" means the number of persons as last determined by
32 the office of financial management. If the jurisdiction is comprised
33 of a single county, "population" means the number of persons in that
34 county. If the jurisdiction is comprised of two or more counties,
35 "population" means the number of persons in all counties of which the
36 jurisdiction is comprised.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70 RCW
2 to read as follows:

3 (1) The secretary must establish a review process for determining
4 whether a local health jurisdiction is in substantial compliance with
5 the minimum standards for public health protection established under
6 RCW 43.70.520.

7 (2) Except as provided in subsection (5) of this section, the
8 secretary must use the process established in subsection (1) of this
9 section to review each local health jurisdiction in the state at least
10 once every three years.

11 (3)(a) If the secretary finds that a local health jurisdiction is
12 not in substantial compliance with the minimum standards for public
13 health protection, he or she must notify the local health jurisdiction
14 in writing.

15 (b) A local health jurisdiction receiving written notice under this
16 subsection must submit a plan of correction within sixty days. The
17 plan of correction must explain the measures that the jurisdiction will
18 undertake to achieve substantial compliance with the standards within
19 one hundred eighty days.

20 (c) If the secretary determines that the plan of correction is
21 likely to bring the jurisdiction into substantial compliance within one
22 hundred eighty days, he or she must provide technical assistance to the
23 jurisdiction to help it to successfully complete the plan of
24 correction. If the secretary determines that the plan of correction is
25 not likely to bring the jurisdiction into substantial compliance within
26 one hundred eighty days, he or she must reject the plan of correction
27 and allow the jurisdiction to revise and resubmit the plan within
28 fifteen days. If the secretary finds that the revised plan of
29 correction is not likely to bring the jurisdiction into substantial
30 compliance within one hundred eighty days, or if the jurisdiction does
31 not resubmit a revised plan within fifteen days, he or she shall send
32 notice to the state treasurer that the jurisdiction is out of
33 substantial compliance under subsection (4) of this section.

34 (d) The secretary must review a local health jurisdiction with an
35 approved plan of correction one hundred eighty days after the approved
36 plan's submission. If the secretary finds that the jurisdiction
37 remains out of substantial compliance after the review required by this

1 subsection (3)(d), he or she must send notice to the state treasurer
2 that the jurisdiction is out of substantial compliance under subsection
3 (4) of this section.

4 (4)(a) The secretary must notify the state treasurer when the
5 secretary finds, under subsections (3)(c) or (d) of this section, that
6 a local health jurisdiction is out of substantial compliance
7 established under RCW 43.70.520. Upon notification under this
8 subsection, the state treasurer must suspend any distributions made to
9 the jurisdiction under section 2 of this act until the secretary sends
10 notice that the jurisdiction is back in substantial compliance.

11 (b) The secretary must review, using the process established under
12 subsection (1) of this section, a jurisdiction subject to suspension
13 under (a) of this subsection no sooner than one hundred eighty days
14 after notice of suspension was sent to the state treasurer. If the
15 secretary finds that the jurisdiction remains out of substantial
16 compliance, the secretary must continue the suspension and review the
17 jurisdiction at intervals of at least one hundred eighty days until the
18 secretary finds that the jurisdiction is in substantial compliance.
19 Once the secretary finds that the jurisdiction is in substantial
20 compliance after a review under this subsection, he or she must notify
21 the state treasurer, who must immediately resume the distributions
22 required under section 2 of this act and distribute any moneys the
23 jurisdiction should have received during the period of suspension.

24 (5) The secretary may exempt a local health jurisdiction from the
25 review process required by this section if the jurisdiction is
26 accredited by an organization whose accreditation standards meet or
27 exceed the minimum standards for public health protection established
28 under RCW 43.70.520.

29 **Sec. 4.** RCW 43.70.514 and 2007 c 259 s 61 are each amended to read
30 as follows:

31 The definitions in this section apply throughout (~~sections 60~~
32 ~~through 65 of this act~~) this section and RCW 43.70.516 unless the
33 context clearly requires otherwise.

34 (1) "Core public health functions of statewide significance" or
35 "public health functions" means health services that:

36 (a) Address: Communicable disease prevention and response;
37 preparation for, and response to, public health emergencies caused by

1 pandemic disease, earthquake, flood, or terrorism; prevention and
2 management of chronic diseases and disabilities; promotion of healthy
3 families and the development of children; assessment of local health
4 conditions, risks, and trends, and evaluation of the effectiveness of
5 intervention efforts; and environmental health concerns;

6 (b) Promote uniformity in the public health activities conducted by
7 all local health jurisdictions in the public health system, increase
8 the overall strength of the public health system, or apply to broad
9 public health efforts; and

10 (c) If left neglected or inadequately addressed, are reasonably
11 likely to have a significant adverse impact on counties beyond the
12 borders of the local health jurisdiction.

13 (2) "Local health jurisdiction" or "jurisdiction" means a county
14 board of health organized under chapter 70.05 RCW, a health district
15 organized under chapter 70.46 RCW, or a combined city and county health
16 department organized under chapter 70.08 RCW.

17 **Sec. 5.** RCW 43.70.516 and 2007 c 259 s 62 are each amended to read
18 as follows:

19 ~~(1) ((The department shall accomplish the tasks included in~~
20 ~~subsection (2) of this section by utilizing the expertise of varied~~
21 ~~interests, as provided in this subsection.~~

22 ~~(a) In addition to the perspectives of local health jurisdictions,~~
23 ~~the state board of health, the Washington health foundation, and~~
24 ~~department staff that are currently engaged in development of the~~
25 ~~public health services improvement plan under RCW 43.70.520, the~~
26 ~~secretary shall actively engage:~~

27 ~~(i) Individuals or entities with expertise in the development of~~
28 ~~performance measures, accountability and systems management, such as~~
29 ~~the University of Washington school of public health and community~~
30 ~~medicine, and experts in the development of evidence-based medical~~
31 ~~guidelines or public health practice guidelines; and~~

32 ~~(ii) Individuals or entities who will be impacted by performance~~
33 ~~measures developed under this section and have relevant expertise, such~~
34 ~~as community clinics, public health nurses, large employers, tribal~~
35 ~~health providers, family planning providers, and physicians.~~

36 ~~(b) In developing the performance measures, consideration shall be~~
37 ~~given to levels of performance necessary to promote uniformity in core~~

1 public health functions of statewide significance among all local
2 health jurisdictions, best scientific evidence, national standards of
3 performance, and innovations in public health practice. The
4 performance measures shall be developed to meet the goals and outcomes
5 in RCW 43.70.512. The office of the state auditor shall provide advice
6 and consultation to the committee to assist in the development of
7 effective performance measures and health status indicators.

8 ~~(c) On or before November 1, 2007, the experts assembled under this~~
9 ~~section shall provide recommendations to the secretary related to the~~
10 ~~activities and services that qualify as core public health functions of~~
11 ~~statewide significance and performance measures. The secretary shall~~
12 ~~provide written justification for any departure from the~~
13 ~~recommendations.~~

14 ~~(2))~~ By January 1, 2008, the department shall ~~((~~

15 ~~(a))~~ adopt a prioritized list of activities and services performed
16 by local health jurisdictions that qualify as core public health
17 functions of statewide significance as defined in RCW 43.70.514 ~~((~~

18 ~~(b) Adopt appropriate performance measures with the intent of~~
19 ~~improving health status indicators applicable to the core public health~~
20 ~~functions of statewide significance that local health jurisdictions~~
21 ~~must provide))~~.

22 ~~((3))~~ (2) The secretary may revise the list of activities ~~((and~~
23 ~~the performance measures))~~ in future years as appropriate. Prior to
24 modifying ~~((either))~~ the list ~~((or the performance measures))~~, the
25 secretary must provide a written explanation of the rationale for such
26 changes.

27 ~~((4) The department and the local health jurisdictions shall abide~~
28 ~~by the prioritized list of activities and services and the performance~~
29 ~~measures developed pursuant to this section.~~

30 ~~(5) The department, in consultation with representatives of county~~
31 ~~governments, shall provide local jurisdictions with financial~~
32 ~~incentives to encourage and increase local investments in core public~~
33 ~~health functions. The local jurisdictions shall not supplant existing~~
34 ~~local funding with such state-incented resources.))~~

35 NEW SECTION. Sec. 6. The following acts or parts of acts are each
36 repealed:

1 (1) RCW 43.70.512 (Public health--Required measurable outcomes) and
2 2007 c 259 s 60; and

3 (2) RCW 43.70.522 (Public health performance measures--Assessing
4 the use of funds--Secretary's duties) and 2007 c 259 s 65.

5 **Sec. 7.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read
6 as follows:

7 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
8 sales of food and food ingredients. "Food and food ingredients" means
9 substances, whether in liquid, concentrated, solid, frozen, dried, or
10 dehydrated form, that are sold for ingestion or chewing by humans and
11 are consumed for their taste or nutritional value. "Food and food
12 ingredients" does not include:

13 (a) "Alcoholic beverages," which means beverages that are suitable
14 for human consumption and contain one-half of one percent or more of
15 alcohol by volume; and

16 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
17 tobacco, or any other item that contains tobacco.

18 (2) The exemption of "food and food ingredients" provided for in
19 subsection (1) of this section (~~shall~~) does not apply to prepared
20 food, soft drinks, candy, or dietary supplements.

21 (a) "Prepared food" means:

22 (i) Food sold in a heated state or heated by the seller;

23 (ii) Food sold with eating utensils provided by the seller,
24 including plates, knives, forks, spoons, glasses, cups, napkins, or
25 straws. A plate does not include a container or packaging used to
26 transport the food; or

27 (iii) Two or more food ingredients mixed or combined by the seller
28 for sale as a single item, except:

29 (A) Food that is only cut, repackaged, or pasteurized by the
30 seller; or

31 (B) Raw eggs, fish, meat, poultry, and foods containing these raw
32 animal foods requiring cooking by the consumer as recommended by the
33 federal food and drug administration in chapter 3, part 401.11 of The
34 Food Code, published by the food and drug administration, as amended or
35 renumbered as of January 1, 2003, so as to prevent foodborne illness.

36 (b) "Prepared food" does not include the following food or food

1 ingredients, if the food or food ingredients are sold without eating
2 utensils provided by the seller:

3 (i) Food sold by a seller whose proper primary North American
4 industry classification system (NAICS) classification is manufacturing
5 in sector 311, except subsector 3118 (bakeries), as provided in the
6 "North American industry classification system--United States, 2002";

7 (ii) Food sold in an unheated state by weight or volume as a single
8 item; or

9 (iii) Bakery items. The term "bakery items" includes bread, rolls,
10 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
11 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

12 (c) "Soft drinks" means nonalcoholic beverages that contain natural
13 or artificial sweeteners. Soft drinks do not include beverages that
14 contain: Milk or milk products; soy, rice, or similar milk
15 substitutes; or greater than fifty percent of vegetable or fruit juice
16 by volume.

17 (d) "Dietary supplement" means any product, other than tobacco,
18 intended to supplement the diet that:

19 (i) Contains one or more of the following dietary ingredients:

20 (A) A vitamin;

21 (B) A mineral;

22 (C) An herb or other botanical;

23 (D) An amino acid;

24 (E) A dietary substance for use by humans to supplement the diet by
25 increasing the total dietary intake; or

26 (F) A concentrate, metabolite, constituent, extract, or combination
27 of any ingredient described in this subsection;

28 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
29 gelcap, or liquid form, or if not intended for ingestion in such form,
30 is not represented as conventional food and is not represented for use
31 as a sole item of a meal or of the diet; and

32 (iii) Is required to be labeled as a dietary supplement,
33 identifiable by the "supplement facts" box found on the label as
34 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
35 of January 1, 2003.

36 (e) "Candy" means a preparation of sugar, honey, or other natural
37 or artificial sweeteners in combination with chocolate, fruits, nuts,

1 or other ingredients or flavorings in the form of bars, drops, or
2 pieces. "Candy" does not include any preparation containing flour and
3 does not require refrigeration.

4 (3) Notwithstanding anything in this section to the contrary, the
5 exemption of "food and food ingredients" provided in this section shall
6 apply to food and food ingredients that are furnished, prepared, or
7 served as meals:

8 (a) Under a state administered nutrition program for the aged as
9 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
10 74.38.040(6);

11 (b) That are provided to senior citizens, individuals with
12 disabilities, or low-income persons by a not-for-profit organization
13 organized under chapter 24.03 or 24.12 RCW; or

14 (c) That are provided to residents, sixty-two years of age or
15 older, of a qualified low-income senior housing facility by the lessor
16 or operator of the facility. The sale of a meal that is billed to both
17 spouses of a marital community or both domestic partners of a domestic
18 partnership meets the age requirement in this subsection (3)(c) if at
19 least one of the spouses or domestic partners is at least sixty-two
20 years of age. For purposes of this subsection, "qualified low-income
21 senior housing facility" means a facility:

22 (i) That meets the definition of a qualified low-income housing
23 project under Title 26 U.S.C. Sec. 42 of the federal internal revenue
24 code, as existing on August 1, 2009;

25 (ii) That has been partially funded under Title 42 U.S.C. Sec. 1485
26 of the federal internal revenue code; and

27 (iii) For which the lessor or operator has at any time been
28 entitled to claim a federal income tax credit under Title 26 U.S.C.
29 Sec. 42 of the federal internal revenue code.

30 (4)(a) Subsection (1) of this section notwithstanding, the retail
31 sale of food and food ingredients is subject to sales tax under RCW
32 82.08.020 if the food and food ingredients are sold through a vending
33 machine, and in this case the selling price for purposes of RCW
34 82.08.020 is fifty-seven percent of the gross receipts.

35 (b) This subsection (4) does not apply to hot prepared food and
36 food ingredients, other than food and food ingredients which are heated
37 after they have been dispensed from the vending machine.

1 (c) For tax collected under this subsection (4), the requirements
2 that the tax be collected from the buyer and that the amount of tax be
3 stated as a separate item are waived.

4 **Sec. 8.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to read
5 as follows:

6 (1) The provisions of this chapter (~~shall~~) do not apply in
7 respect to the use of food and food ingredients for human consumption.
8 "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

9 (2) The exemption of "food and food ingredients" provided for in
10 subsection (1) of this section (~~shall~~) does not apply to prepared
11 food, soft drinks, candy, or dietary supplements. "Prepared food,"
12 "soft drinks," (~~and~~) "dietary supplements," and "candy" have the same
13 meanings as in RCW 82.08.0293.

14 (3) Notwithstanding anything in this section to the contrary, the
15 exemption of "food and food ingredients" provided in this section shall
16 apply to food and food ingredients which are furnished, prepared, or
17 served as meals:

18 (a) Under a state administered nutrition program for the aged as
19 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
20 74.38.040(6);

21 (b) Which are provided to senior citizens, individuals with
22 disabilities, or low-income persons by a not-for-profit organization
23 organized under chapter 24.03 or 24.12 RCW; or

24 (c) That are provided to residents, sixty-two years of age or
25 older, of a qualified low-income senior housing facility by the lessor
26 or operator of the facility. The sale of a meal that is billed to both
27 spouses of a marital community or both domestic partners of a domestic
28 partnership meets the age requirement in this subsection (3)(c) if at
29 least one of the spouses or domestic partners is at least sixty-two
30 years of age. For purposes of this subsection, "qualified low-income
31 senior housing facility" has the same meaning as in RCW 82.08.0293.

32 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.32 RCW
33 to read as follows:

34 (1) By December 1, 2010, and by December 1st for each year
35 thereafter, the state treasurer must transfer from the general fund to

1 the public health improvement account created in section 2 of this act
2 the amount specified by the department as required under subsection (2)
3 of this section.

4 (2) By November 1, 2010, and by November 1st for each year
5 thereafter, the department must notify the state treasurer of the
6 estimated amount of state sales and use taxes that will be collected
7 during the current calendar year resulting from the elimination of the
8 sales and use tax exemption on candy in section 7 of this act.

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