

# HOUSE BILL REPORT

## SSB 5196

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### As Passed House:

April 10, 2017

**Title:** An act relating to including certain cattle feedlots within the statutory exemption for odor or fugitive dust caused by agricultural activity.

**Brief Description:** Including cattle feedlots implementing best management practices within the statutory exemption for odor or fugitive dust caused by agricultural activity.

**Sponsors:** Senate Committee on Agriculture, Water, Trade & Economic Development (originally sponsored by Senators Warnick, Hobbs, Takko, King, Chase and Honeyford).

### Brief History:

#### Committee Activity:

Environment: 3/16/17, 3/27/17 [DP].

#### Floor Activity:

Passed House: 4/10/17, 96-2.

### Brief Summary of Substitute Bill

- Includes cattle feedlots implementing specified best management practices pursuant to the feedlot's fugitive dust control plan within the agricultural activities that are exempt under the Washington Clean Air Act from certain fugitive dust regulations.
- Limits the scope of the agricultural activities exemption as may be required in certain instances in order to comply with certain federal Clean Air Act requirements.
- Specifies that any notice of violation issued by the Department of Ecology related to odors or fugitive dust caused by agricultural activities must include either a detailed statement with evidence as to why the activity is not consistent with good agricultural practices or a detailed statement with evidence that the odors or fugitive dust have a substantial adverse effect on public health.

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## HOUSE COMMITTEE ON ENVIRONMENT

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass. Signed by 9 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Fey, Kagi and McBride.

**Staff:** Robert Hatfield (786-7117).

**Background:**

Clean Air Act Requirements.

The Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the United States Environmental Protection Agency (EPA) to administer aspects of the federal Clean Air Act in Washington. In addition to the federal Clean Air Act, Washington has also enacted a state Clean Air Act.

Local clean air agencies have the primary responsibility for administering both the state and federal Clean Air Act programs in counties which have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal Clean Air Act programs. Civil penalties of up to \$10,000 per violation are authorized by the state Clean Air Act.

Under the federal Clean Air Act, each state maintains a State Implementation Plan (SIP) that describes how the state will implement clean air programs to achieve the federal National Ambient Air Quality Standards (NAAQS) for air pollutants. If the state does not achieve the NAAQS in a portion of the state for a particular air pollutant, that area is considered to be in nonattainment, and the state must revise its SIP with the goal of regaining attainment with the NAAQS. Ecology must submit the SIP revisions to the EPA for approval and may work with affected local air agencies to revise the SIP.

Under the state Clean Air Act, Ecology sets Washington Ambient Air Quality Standards (WAAQS). Local air authorities may also adopt standards that apply within their jurisdiction, which must be at least as protective as the federal standards. The state Clean Air Act directs Ecology or the local air authorities to require permits for certain operating sources of air pollutants and allows the state and these local air authorities to impose registration requirements on sources of other air pollutants.

Odors and fugitive dust are two types of emissions regulated under the state Clean Air Act's general standards for maximum emissions. Fugitive dust is defined as particulate emission made airborne by human activity, forces of wind, or both, which does not pass through a stack, chimney, vent, or similar opening. The standards require sources of fugitive emissions to implement "reasonable precautions" to prevent fugitive air emissions from being released and to prevent fugitive dust from becoming airborne. The EPA has approved Ecology's incorporation of fugitive dust rules into Washington's SIP. Sources of odors that may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce those odors to a reasonable minimum.

Agricultural Activity Exemption to the Washington Clean Air Act.

There is an exemption to the requirements of the state Clean Air Act for agricultural activities that cause odors or fugitive dust, so long as the activities are consistent with good agricultural practices, and unless they have a substantial adverse effect on public health. The state Clean Air Act defines agricultural activity to include the raising of livestock. The agricultural activity exemption for fugitive dust does not apply to certain sources, including to cattle feedlots that have an inventory of 1,000 or more cattle in operation between June 1 and October 1.

Any notice of violation issued under the state Clean Air Act related to odors or fugitive dust caused by an agricultural activity must include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors or fugitive dust have a substantial adverse effect on public health.

Fugitive Dust Control Guidelines.

In 1995 Ecology issued a series of guidelines known as Fugitive Dust Control Guidelines for Beef Cattle Feedlots and Best Management Practices (Guidelines). The Guidelines identify best management practices for complying with the reasonable precautions standard for controlling dust at feedlots. Under the Guidelines, each feedlot develops its own fugitive dust control plan and implements its plan according to the criteria and/or implementation schedules outlined in their plans.

**Summary of Bill:**

Any notice of violation issued under the state Clean Air Act pertaining to odors or fugitive dust caused by agricultural activity must include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or a detailed statement with evidence that the odors or fugitive dust have a substantial adverse effect on public health.

The definition of "agricultural activity" is expanded to include the growing, raising, or production of cattle at cattle feedlots.

The definition of "good agricultural practices" includes cattle feedlots implementing best management practices pursuant to a fugitive dust control plan that conforms to fugitive dust control guidelines approved by Ecology in 1995, as well as any subsequent updates to those guidelines that are mutually agreed to by Ecology and the Washington Cattle Feeders Association, or a successor organization, on behalf of cattle feedlots.

The agricultural activity exemption for fugitive dust under the state Clean Air Act for fugitive dust applies to cattle feedlots that have an inventory of 1,000 or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.

Cattle feedlots must comply with applicable requirements included in the SIP for air quality in effect as of the effective date of the act.

If an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standard for particulate matter, additional

control measures may be required for cattle feedlots as part of the State Implementation Plan's control strategy for the area, and as needed to ensure the area returns to attainment.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The amended language in the bill was worked out hand in hand between the Ecology and the cattle feedlot industry. The bill would not prohibit Ecology from taking necessary steps to bring an area in a nonattainment status under the federal Clean Air Act back into attainment status. Virtually every cattle feedlot already has a best management practices program in place, but there has not been a mechanism in place to approve those best management practices. This bill is a great first step for cattle feeders and Ecology to move forward to address air quality and perhaps other issues. The best management practices come from an air quality document that cattle feeders and Ecology developed, and they include cattle crowding, road applications, overhead sprinklers, and reducing vehicle speeds. This bill would bring cattle feedlots within the definition of agriculture.

(Opposed) None.

**Persons Testifying:** Senator Warnick, prime sponsor; Bill Easterday and Jack Field, Washington Cattle Feeders Association.

**Persons Signed In To Testify But Not Testifying:** None.