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HOUSE BILL 1637

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State of Washington

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2019 Regular Session

By Representatives Pollet and Valdez

Read first time 01/25/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to addressing airborne nuisances experienced by  
2 transitory populations; amending RCW 70.94.030 and 7.48.020; adding a  
3 new section to chapter 70.94 RCW; and adding a new section to chapter  
4 7.48 RCW.

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

6 **Sec. 1.** RCW 70.94.030 and 2005 c 197 s 2 are each amended to  
7 read as follows:

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

10 (1) "Air contaminant" means dust, fumes, mist, smoke, other  
11 particulate matter, vapor, gas, odorous substance, or any combination  
12 thereof.

13 (2) "Air pollution" is presence in the outdoor atmosphere of one  
14 or more air contaminants in sufficient quantities and of such  
15 characteristics and duration as is, or is likely to be, injurious to  
16 human health, plant or animal life, or property, or which  
17 unreasonably interfere with enjoyment of life and property. Air  
18 pollution includes any odor or air emission that unreasonably  
19 interferes with a person's use or enjoyment of a public park, public  
20 recreational facility or trail, or publicly owned commons of any  
21 municipal government or state agency, as a result of an odor or air

1 emission that is sufficiently noxious or offensive as to prevent  
2 normal use of the facility, or that creates a risk of illness or  
3 other adverse health effect as a result of normal use of the  
4 facility. For the purpose of this chapter, air pollution shall not  
5 include air contaminants emitted in compliance with chapter 17.21  
6 RCW.

7 (3) "Air quality standard" means an established concentration,  
8 exposure time, and frequency of occurrence of an air contaminant or  
9 multiple contaminants in the ambient air which shall not be exceeded.

10 (4) "Ambient air" means the surrounding outside air.

11 (5) "Authority" means any air pollution control agency whose  
12 jurisdictional boundaries are coextensive with the boundaries of one  
13 or more counties.

14 (6) "Best available control technology" (BACT) means an emission  
15 limitation based on the maximum degree of reduction for each air  
16 pollutant subject to regulation under this chapter emitted from or  
17 that results from any new or modified stationary source, that the  
18 permitting authority, on a case-by-case basis, taking into account  
19 energy, environmental, and economic impacts and other costs,  
20 determines is achievable for such a source or modification through  
21 application of production processes and available methods, systems,  
22 and techniques, including fuel cleaning, clean fuels, or treatment or  
23 innovative fuel combustion techniques for control of each such a  
24 pollutant. In no event shall application of "best available control  
25 technology" result in emissions of any pollutants that will exceed  
26 the emissions allowed by any applicable standard under 40 C.F.R. Part  
27 60 and Part 61, as they exist on July 25, 1993, or their later  
28 enactments as adopted by reference by the director by rule. Emissions  
29 from any source utilizing clean fuels, or any other means, to comply  
30 with this subsection shall not be allowed to increase above levels  
31 that would have been required under the definition of BACT as it  
32 existed prior to enactment of the federal clean air act amendments of  
33 1990.

34 (7) "Best available retrofit technology" (BART) means an emission  
35 limitation based on the degree of reduction achievable through the  
36 application of the best system of continuous emission reduction for  
37 each pollutant that is emitted by an existing stationary facility.  
38 The emission limitation must be established, on a case-by-case basis,  
39 taking into consideration the technology available, the costs of  
40 compliance, the energy and nonair quality environmental impacts of

1 compliance, any pollution control equipment in use or in existence at  
2 the source, the remaining useful life of the source, and the degree  
3 of improvement in visibility that might reasonably be anticipated to  
4 result from the use of the technology.

5 (8) "Board" means the board of directors of an authority.

6 (9) "Control officer" means the air pollution control officer of  
7 any authority.

8 (10) "Department" or "ecology" means the department of ecology.

9 (11) "Emission" means a release of air contaminants into the  
10 ambient air.

11 (12) "Emission standard" and "emission limitation" mean a  
12 requirement established under the federal clean air act or this  
13 chapter that limits the quantity, rate, or concentration of emissions  
14 of air contaminants on a continuous basis, including any requirement  
15 relating to the operation or maintenance of a source to assure  
16 continuous emission reduction, and any design, equipment, work  
17 practice, or operational standard adopted under the federal clean air  
18 act or this chapter.

19 (13) "Fine particulate" means particulates with a diameter of two  
20 and one-half microns and smaller.

21 (14) (a) "Lowest achievable emission rate" (LAER) means for any  
22 source that rate of emissions that reflects:

23 ~~((a))~~ (i) The most stringent emission limitation that is  
24 contained in the implementation plan of any state for such class or  
25 category of source, unless the owner or operator of the proposed  
26 source demonstrates that such limitations are not achievable; or

27 ~~((b))~~ (ii) The most stringent emission limitation that is  
28 achieved in practice by such class or category of source, whichever  
29 is more stringent.

30 (b) In no event shall the application of this term permit a  
31 proposed new or modified source to emit any pollutant in excess of  
32 the amount allowable under applicable new source performance  
33 standards.

34 (15) "Modification" means any physical change in, or change in  
35 the method of operation of, a stationary source that increases the  
36 amount of any air contaminant emitted by such source or that results  
37 in the emission of any air contaminant not previously emitted. The  
38 term modification shall be construed consistent with the definition  
39 of modification in Section 7411, Title 42, United States Code, and  
40 with rules implementing that section.

1 (16) "Multicounty authority" means an authority which consists of  
2 two or more counties.

3 (17) "New source" means (a) the construction or modification of a  
4 stationary source that increases the amount of any air contaminant  
5 emitted by such source or that results in the emission of any air  
6 contaminant not previously emitted, and (b) any other project that  
7 constitutes a new source under the federal clean air act.

8 (18) "Permit program source" means a source required to apply for  
9 or to maintain an operating permit under RCW 70.94.161.

10 (19) "Person" means an individual, firm, public or private  
11 corporation, association, partnership, political subdivision of the  
12 state, municipality, or governmental agency.

13 (20) "Reasonably available control technology" (RACT) means the  
14 lowest emission limit that a particular source or source category is  
15 capable of meeting by the application of control technology that is  
16 reasonably available considering technological and economic  
17 feasibility. RACT is determined on a case-by-case basis for an  
18 individual source or source category taking into account the impact  
19 of the source upon air quality, the availability of additional  
20 controls, the emission reduction to be achieved by additional  
21 controls, the impact of additional controls on air quality, and the  
22 capital and operating costs of the additional controls. RACT  
23 requirements for a source or source category shall be adopted only  
24 after notice and opportunity for comment are afforded.

25 (21) "Silvicultural burning" means burning of wood fiber on  
26 forestland consistent with the provisions of RCW (~~70.94.660~~)  
27 70.94.6534.

28 (22) "Source" means all of the emissions units including  
29 quantifiable fugitive emissions, that are located on one or more  
30 contiguous or adjacent properties, and are under the control of the  
31 same person, or persons under common control, whose activities are  
32 ancillary to the production of a single product or functionally  
33 related group of products.

34 (23) "Stationary source" means any building, structure, facility,  
35 or installation that emits or may emit any air contaminant.

36 (24) "Trigger level" means the ambient level of fine  
37 particulates, measured in micrograms per cubic meter, that must be  
38 detected prior to initiating a first or second stage of impaired air  
39 quality under RCW 70.94.473.

1       (25) "Clean air act enforcement authority" means an entity with  
2 the legal authority to enforce the clean air act in a given  
3 geographical area. Depending on the given geographical area, this may  
4 be the department or a regional clean air agency.

5       NEW SECTION. Sec. 2. A new section is added to chapter 70.94  
6 RCW to read as follows:

7       (1) When a complaint of an odor or air emission is made to a  
8 clean air act enforcement authority in connection with the use of a  
9 public park, public recreational facility or trail, or publicly owned  
10 commons of any municipal government or state agency, an air quality  
11 inspector acting on behalf of the clean air enforcement authority may  
12 act on the complaint irrespective of whether the person initiating  
13 the complaint remains at, or has left, the public park, public  
14 recreational facility or trail, or publicly owned commons of any  
15 municipal government or state agency.

16       (2) In the event of a complaint of an odor or air emission made  
17 in connection with the use of a public park, public recreational  
18 facility or trail, or publicly owned commons of any municipal  
19 government or state agency, the clean air act enforcement authority  
20 receiving the complaint may initiate enforcement action under this  
21 chapter based upon a finding by an air quality inspector acting on  
22 behalf of the clean air enforcement authority that the odor or air  
23 emission creates a nuisance or health hazard that interferes with the  
24 reasonable use or enjoyment of the public park, public recreational  
25 facility or trail, or publicly owned commons of any municipal  
26 government or state agency.

27       NEW SECTION. Sec. 3. A new section is added to chapter 7.48 RCW  
28 to read as follows:

29       A city may use the repeated findings of an air quality inspector  
30 acting on behalf of a clean air enforcement authority that an odor or  
31 air emission creates a nuisance or health hazard that interferes with  
32 the reasonable use or enjoyment of a public park, public recreational  
33 facility or trail, or publicly owned commons of any municipal  
34 government or state agency in order to initiate an action under this  
35 chapter against the source of the odor or air emission for damages  
36 and further relief, irrespective of the source's permitting status  
37 pursuant to chapter 70.94 RCW.

1       **Sec. 4.** RCW 7.48.020 and 1994 c 45 s 5 are each amended to read  
2 as follows:

3       ~~((Such))~~ (1) An action for damages or other relief under this  
4 chapter may be brought by any person whose property is, or whose  
5 patrons or employees are, injuriously affected or whose personal  
6 enjoyment is lessened by the nuisance. An action for damages or other  
7 relief under this chapter based on an airborne nuisance may also be  
8 brought by a municipal government or by a clean air act enforcement  
9 authority as defined in RCW 70.94.030, on behalf of the residents of  
10 a health care facility as defined in RCW 70.02.010, on behalf of the  
11 residents of a nursing home as defined in RCW 18.51.010, on behalf of  
12 residential tenants, or on behalf of the customers of a business. If  
13 judgment be given for the plaintiff in such action, he or she may, in  
14 addition to the execution to enforce the same, on motion, have an  
15 order allowing a warrant to issue to the sheriff to abate and to  
16 deter or prevent the resumption of such nuisance. Such motion shall  
17 be allowed, of course, unless it appear on the hearing that the  
18 nuisance has ceased, or that such remedy is inadequate to abate or  
19 prevent the continuance of the nuisance, in which latter case the  
20 plaintiff may have the defendant enjoined.

21       (2) Where judgment be given either for the owner or manager of a  
22 public park, public recreational facility or trail, or publicly owned  
23 commons of any municipal government or state agency in an action  
24 brought pursuant to section 3 of this act, or a municipal government  
25 or clean air act enforcement authority on behalf of the residents of  
26 a nursing home or health care facility pursuant to subsection (1) of  
27 this section, the owner, manager, municipal government, or clean air  
28 enforcement authority may, on motion, have an order to abate the  
29 nuisance including, but not limited to, requiring the use of  
30 practices or enclosures that are reasonably expected to prevent  
31 escape of odors or air emissions that would prevent the reasonable  
32 use or enjoyment of the public park, public recreational facility or  
33 trail, or publicly owned commons of any municipal government or state  
34 agency, or impair the health or quality of life of residents of a  
35 nursing home or health care facility.

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