

# HOUSE BILL REPORT

## HB 1057

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**As Reported by House Committee On:**  
Environment & Energy

**Title:** An act relating to clarifying the meaning of the term "enjoyment of life and property" within the clean air act.

**Brief Description:** Clarifying the meaning of the term "enjoyment of life and property" within the clean air act.

**Sponsors:** Representatives Pollet, Valdez, Fitzgibbon, Ryu, Ramel and Duerr.

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/12/21, 2/12/21 [DPS].

**Brief Summary of Substitute Bill**

- Creates a work group to develop an odor control plan and best management practices for asphalt plants for the purpose of reducing noxious odors, including requirements related to the enjoyment of life and property.
- Includes in the membership of the work group representatives from the asphalt industry, regional clean air agencies, local health departments, and research institutions, among others.
- Directs the work group to submit recommendations by January 1, 2022, on the development of an odor control plan and best management practices for asphalt plants, which may be incorporated into permits or policies adopted by the Department of Ecology and the regional clean air agencies.

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**HOUSE COMMITTEE ON ENVIRONMENT & ENERGY**

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

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel and Slatter.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

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

**Background:**

The Washington Clean Air Act.

The Washington Clean Air Act (Act) regulates outdoor air pollution. The Act defines "air pollution" as the "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property."

Air pollution control regulations address emissions of air contaminants that injure health or unreasonably interfere with enjoyment of life and property. Enforcement authority for the Act is handled either by the Department of Ecology (Ecology) or by one of the seven regional clean air agencies within Washington, depending on the county in which the source is located.

A person may file a complaint about an odor via a regional clean air agency or via Ecology, depending on the county in which the odor is located.

Some activities, such as certain agricultural activities and particular forms of silvicultural burning, are exempt from certain provisions of the Act, provided they satisfy criteria set forth in the Act.

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**Summary of Substitute Bill:**

A work group is created to develop an odor control plan and best management practices for asphalt plants for the purpose of reducing noxious odors, including requirements related to the enjoyment of life and property.

The work group consists of the following members, to be appointed by the Director of the Department of Ecology (Ecology):

- two representatives of the asphalt industry;
- two representatives of regional clean air agencies;

- two representatives of local government;
- two representatives of research institutions in Washington with expertise in air pollution control and manufacturing or engineering;
- two representatives of local public health agencies; and
- one representative of a community or environmental organization with expertise in air pollution, toxicology, or other relevant fields.

The Director of Ecology, or the Director's designee, must serve as the chair of the work group. The first meeting of the work group must occur by August 1, 2021. Staff support for the work group must be provided by Ecology.

By January 1, 2022, the work group must submit recommendations to the Director of Ecology on the development of an odor control plan and best management practices for asphalt plants, which may be incorporated into permits or policies adopted by Ecology and the regional clean air agencies.

The work group expires on December 31, 2024.

**Substitute Bill Compared to Original Bill:**

The amendment of the definition of "air pollution" is removed.

A work group is created for the purpose of developing an odor control plan and best management practices for asphalt plants for the purpose of reducing noxious odors, including requirements related to the enjoyment of life and property.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 12, 2021.

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

**Staff Summary of Public Testimony:**

(In support) One asphalt plant is impacting the ability to use outdoor recreation facilities. The city has grown around the facility, and there is a need to do more to protect citizens who are living and recreating in close proximity to the asphalt facility. The city has done as much as can be done under current law, but enforcement agencies are currently limited in their enforcement authority to act on complaints only from those who have a possessory right in the property from which they are experiencing odors.

The current law is obsolete. There needs to be a remodel of the law that allows everyone to

count in terms of being able to report odors. This bill is needed for those who bike and fish to be able to lodge a complaint of nuisance odors. The current system does not work for anyone. Residents of mobile home parks may not qualify to make odor complaints under the Clean Air Act (Act). Users of public spaces are not really able to make complaints either, despite all the many people who use those public spaces.

The Act allows regional clean air agencies to address complaints from people with possessory rights, including tenants. There is no private right of action under the Act. The goal is never to collect a penalty; the goal is to get compliance with the Act.

This situation is similar to the right to vote: it was initially available only to property owners, and was then expanded. The current right to make a complaint should also be expanded.

(Opposed) The language in the bill is far too broad. Facilities are already heavily regulated. Adding a subjective requirement would place facilities under constant risk for litigation and would make it next to impossible for facilities to operate without running afoul of the Act. Washington already has a very strict regulatory scheme.

One asphalt plant started in 1973, a nearby recreational trail was created in 1978, and the surrounding city incorporated 25 years after the plant was built. The bill could impact long-standing local businesses that are otherwise in compliance with the Act. Odor complaints should be handled at local level.

The bill may not be in agreement with other air quality programs. The bill would expose facilities to complaints from anyone who uses recreational facilities nearby. One asphalt plant is in an area zoned for industrial uses. The complaints around a particular asphalt plant are a long-term local issue, and should be handled at the local level. Remedies can be obtained through permits and other forms of dialogue.

**Persons Testifying:** (In support) Representative Pollet, prime sponsor; Stacey Valenzuela; Craig Kenworthy, Puget Sound Clean Air Agency; Elizabeth Mooney, Kenmore Clean Air Coalition and People for an Environmentally Responsible Kenmore; David Baker, City of Kenmore; and Vicki Grayland, Kenmore Clean Air Coalition.

(Opposed) Bruce Chattin, Washington Aggregates and Concrete Association; Dave Gent, Washington Asphalt Paving Association; and Peter Godlewski, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** David Morton; Jean Reid; Martin Gibbins, League of Women Voters of Washington; Janet Hays; and Bob Baker, Citizens to Stop SR169 Asphalt Plant.