
SUBSTITUTE SENATE BILL 5036

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Haugen, Winsley and Erwin)

Read first time 02/10/93.

1 AN ACT Relating to noise pollution; amending RCW 70.107.020,
2 70.107.040, 70.107.050, 70.107.060, 46.10.090, and 43.21B.300; and
3 reenacting and amending RCW 43.21B.110.

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

5 **Sec. 1.** RCW 70.107.020 and 1974 ex.s. c 183 s 2 are each amended
6 to read as follows:

7 As used in this chapter, unless the context clearly indicates
8 otherwise:

9 (1) "Department" means the department of ~~((ecology))~~ health.

10 (2) "~~((Director))~~ Secretary" means ~~((director of the department))~~
11 secretary of ~~((ecology))~~ health.

12 (3) "Local government" means county or city government or any
13 combination of the two.

14 (4) "Noise" means the intensity, duration and character of sounds
15 from any and all sources.

16 (5) "Person" means any individual, corporation, partnership,
17 association, governmental body, state, or other entity whatsoever.

1 **Sec. 2.** RCW 70.107.040 and 1975-'76 2nd ex.s. c 34 s 164 are each
2 amended to read as follows:

3 The (~~director~~) secretary shall name a technical advisory
4 committee to assist the department in the implementation of this
5 chapter. Committee members shall be entitled to reimbursement for
6 travel expenses as provided in RCW 43.03.050 and 43.03.060(~~(, as now~~
7 ~~existing or hereafter amended)~~)).

8 **Sec. 3.** RCW 70.107.050 and 1987 c 103 s 2 are each amended to read
9 as follows:

10 (1) Any person who violates any rule adopted by the department
11 under this chapter shall be subject to a civil penalty not to exceed
12 one hundred dollars imposed by local government pursuant to this
13 section. An action under this section shall not preclude enforcement
14 of any provisions of the local government noise ordinance.

15 Penalties shall become due and payable thirty days from the date of
16 receipt of a notice of penalty unless within such time said notice is
17 appealed in accordance with the administrative procedures of the local
18 government, or if it has no such administrative appeal, to the
19 (~~pollution control hearings board pursuant to the provisions of~~
20 ~~chapter 43.21B RCW and procedural rules adopted thereunder~~) state
21 board of health under procedures adopted by the board. In cases in
22 which appeals are timely filed, penalties sustained by the local
23 administrative agency or the (~~pollution control hearings board~~) state
24 board of health shall become due and payable on the issuance of said
25 agency or board's final order in the appeal.

26 (2) Whenever penalties incurred pursuant to this section have
27 become due and payable but remain unpaid, the attorney for the local
28 government may bring an action in the superior court of the county in
29 which the violation occurred for recovery of penalties incurred. In
30 all such actions the procedures and rules of evidence shall be the same
31 as in any other civil action.

32 **Sec. 4.** RCW 70.107.060 and 1987 c 103 s 1 are each amended to read
33 as follows:

34 (1) Nothing in this chapter shall be construed to deny, abridge or
35 alter alternative rights of action or remedies in equity or under
36 common law or statutory law, criminal or civil.

1 (2) Nothing in this chapter shall deny, abridge or alter any
2 powers, duties and functions relating to noise abatement and control
3 now or hereafter vested in any state agency, nor shall this chapter be
4 construed as granting jurisdiction over the industrial safety and
5 health of employees in work places of the state, as now or hereafter
6 vested in the department of labor and industries.

7 (3) Standards and other control measures adopted by the department
8 under this chapter shall be exclusive except as hereinafter provided.
9 A local government may impose limits or control sources differing from
10 those adopted or controlled by the department upon a finding that such
11 requirements are necessitated by special conditions. Noise limiting
12 requirements of local government which differ from those adopted or
13 controlled by the department shall be invalid unless first approved by
14 the department. If the department of (~~ecology~~) health fails to
15 approve or disapprove standards submitted by local governmental
16 jurisdictions within ninety days of submittal, such standards shall be
17 deemed approved. If disapproved, the local government may appeal the
18 decision to the (~~pollution control hearings board~~) state board of
19 health, which shall decide the appeal on the basis of the provisions of
20 this chapter, and the applicable regulations, together with such
21 briefs, testimony, and oral argument as the (~~hearings board~~) state
22 board of health in its discretion may require. The department
23 determination of whether to grant approval shall depend on the
24 reasonableness and practicability of compliance. Particular attention
25 shall be given to stationary sources located near jurisdictional
26 boundaries, and temporary noise producing operations which may operate
27 across one or more jurisdictional boundaries.

28 (4) In carrying out the rule-making authority provided in this
29 chapter, the department shall follow the procedures of the
30 administrative procedure act, chapter 34.05 RCW, and shall take care
31 that no rules adopted purport to exercise any powers preempted by the
32 United States under federal law.

33 **Sec. 5.** RCW 46.10.090 and 1980 c 148 s 1 are each amended to read
34 as follows:

35 (1) It is a traffic infraction for any person to operate any
36 snowmobile:

37 (a) At a rate of speed greater than reasonable and prudent under
38 the existing conditions.

1 (b) In a manner so as to endanger the property of another.

2 (c) Without a lighted headlight and taillight between the hours of
3 dusk and dawn, or when otherwise required for the safety of others.

4 (d) Without an adequate braking device which may be operated either
5 by hand or foot.

6 (e) Without an adequate and operating muffling device which shall
7 effectively blend the exhaust and motor noise in such a manner so as to
8 preclude excessive or unusual noise, and, (i) on snowmobiles
9 manufactured on or before January 4, 1973, which shall effectively
10 limit such noise at a level of eighty-six decibels, or below, on the
11 "A" scale at fifty feet, and (ii) on snowmobiles manufactured after
12 January 4, 1973, which shall effectively limit such noise at a level of
13 eighty-two decibels, or below, on the "A" scale at fifty feet, and
14 (iii) on snowmobiles manufactured after January 1, 1975, which shall
15 effectively limit such noise at a level of seventy-eight decibels, or
16 below, as measured on the "A" scale at a distance of fifty feet, under
17 testing procedures as established by the department of ((ecology))
18 health; except snowmobiles used in organized racing events in an area
19 designated for that purpose may use a bypass or cutout device. This
20 section shall not affect the power of the department of ((ecology))
21 health to adopt noise performance standards for snowmobiles. Noise
22 performance standards adopted or to be adopted by the department of
23 ((ecology)) health shall be in addition to the standards contained in
24 this section, but the department's standards shall supersede this
25 section to the extent of any inconsistency.

26 (f) Upon the paved portion or upon the shoulder or inside bank or
27 slope of any public roadway or highway, or upon the median of any
28 divided highway, except as provided in RCW 46.10.100 and 46.10.110.

29 (g) In any area or in such a manner so as to expose the underlying
30 soil or vegetation, or to injure, damage, or destroy trees or growing
31 crops.

32 (h) Without a current registration decal affixed thereon, if not
33 exempted under RCW 46.10.030 as now or hereafter amended.

34 (2) It is a misdemeanor for any person to operate any snowmobile so
35 as to endanger the person of another or while under the influence of
36 intoxicating liquor or narcotics or habit-forming drugs.

37 **Sec. 6.** RCW 43.21B.110 and 1992 c 174 s 13 and 1992 c 73 s 1 are
38 each reenacted and amended to read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and
2 decide appeals from the following decisions of the department, the
3 director, the administrator of the office of marine safety, and the air
4 pollution control boards or authorities as established pursuant to
5 chapter 70.94 RCW, or local health departments:

6 (a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080,
7 (~~70.107.050~~) 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 90.56.330.

9 (b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332,
10 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

11 (c) The issuance, modification, or termination of any permit,
12 certificate, or license by the department or any air authority in the
13 exercise of its jurisdiction, including the issuance or termination of
14 a waste disposal permit, the denial of an application for a waste
15 disposal permit, or the modification of the conditions or the terms of
16 a waste disposal permit.

17 (d) Decisions of local health departments regarding the grant or
18 denial of solid waste permits pursuant to chapter 70.95 RCW.

19 (e) Decisions of local health departments regarding the issuance
20 and enforcement of permits to use or dispose of biosolids under RCW
21 70.95J.080.

22 (f) Any other decision by the department, the administrator of the
23 office of marine safety, or an air authority which pursuant to law must
24 be decided as an adjudicative proceeding under chapter 34.05 RCW.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
30 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

31 (c) Proceedings by the department relating to general adjudications
32 of water rights pursuant to chapter 90.03 or 90.44 RCW.

33 (d) Hearings conducted by the department to adopt, modify, or
34 repeal rules.

35 (3) Review of rules and regulations adopted by the hearings board
36 shall be subject to review in accordance with the provisions of the
37 Administrative Procedure Act, chapter 34.05 RCW.

1 **Sec. 7.** RCW 43.21B.300 and 1992 c 73 s 2 are each amended to read
2 as follows:

3 (1) Any civil penalty provided in RCW 70.94.431, 70.105.080,
4 (~~70.107.050~~) 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
5 90.56.330 shall be imposed by a notice in writing, either by certified
6 mail with return receipt requested or by personal service, to the
7 person incurring the penalty from the department, the administrator of
8 the office of marine safety, or the local air authority, describing the
9 violation with reasonable particularity. Within fifteen days after the
10 notice is received, the person incurring the penalty may apply in
11 writing to the department, the administrator, or the authority for the
12 remission or mitigation of the penalty. Upon receipt of the
13 application, the department, the administrator, or authority may remit
14 or mitigate the penalty upon whatever terms the department, the
15 administrator, or the authority in its discretion deems proper. The
16 department or the authority may ascertain the facts regarding all such
17 applications in such reasonable manner and under such rules as it may
18 deem proper and shall remit or mitigate the penalty only upon a
19 demonstration of extraordinary circumstances such as the presence of
20 information or factors not considered in setting the original penalty.

21 (2) Any penalty imposed under this section may be appealed to the
22 pollution control hearings board in accordance with this chapter if the
23 appeal is filed with the hearings board and served on the department,
24 the administrator, or authority thirty days after receipt by the person
25 penalized of the notice imposing the penalty or thirty days after
26 receipt of the notice of disposition of the application for relief from
27 penalty.

28 (3) A penalty shall become due and payable on the later of:

29 (a) Thirty days after receipt of the notice imposing the penalty;

30 (b) Thirty days after receipt of the notice of disposition on
31 application for relief from penalty, if such an application is made; or

32 (c) Thirty days after receipt of the notice of decision of the
33 hearings board if the penalty is appealed.

34 (4) If the amount of any penalty is not paid to the department or
35 the administrator within thirty days after it becomes due and payable,
36 the attorney general, upon request of the department or the
37 administrator, shall bring an action in the name of the state of
38 Washington in the superior court of Thurston county, or of any county
39 in which the violator does business, to recover the penalty. If the

1 amount of the penalty is not paid to the authority within thirty days
2 after it becomes due and payable, the authority may bring an action to
3 recover the penalty in the superior court of the county of the
4 authority's main office or of any county in which the violator does
5 business. In these actions, the procedures and rules of evidence shall
6 be the same as in an ordinary civil action.

7 (5) All penalties recovered shall be paid into the state treasury
8 and credited to the general fund except those penalties imposed
9 pursuant to RCW 70.94.431, the disposition of which shall be governed
10 by that provision, RCW 70.105.080, which shall be credited to the
11 hazardous waste control and elimination account, created by RCW
12 70.105.180, and RCW 90.56.330, which shall be credited to the coastal
13 protection fund created by RCW 90.48.390.

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