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**HOUSE BILL 1637**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Pollet and Valdez

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

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

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

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

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

(2) "Air pollution" is 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 includes any odor or air emission that unreasonably interferes with a person's use or enjoyment of a public park, public recreational facility or trail, or publicly owned commons of any municipal government or state agency, as a result of an odor or air emission that is sufficiently noxious or offensive as to prevent normal use of the facility, or that creates a risk of illness or other adverse health effect as a result of normal use of the facility. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

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

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

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

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

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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