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HOUSE BILL 1057

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State of Washington

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2021 Regular Session

By Representatives Pollet, Valdez, Fitzgibbon, Ryu, Ramel, and Duerr

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1 AN ACT Relating to clarifying the meaning of the term "enjoyment  
2 of life and property" within the clean air act; amending RCW  
3 70A.15.1030; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** Stationary air sources that emit noxious  
6 odors or other air contaminants have repeatedly been found to impair  
7 the ability of the public to utilize publicly owned recreational  
8 facilities, parks, and common spaces. The legislature finds that  
9 unimpaired use of publicly owned open spaces is important for public  
10 health. Enforcement of the clean air act's prohibition on air  
11 pollution in the context of the public's enjoyment of publicly owned  
12 spaces has been difficult due to uncertainty concerning the scope of  
13 the term "enjoyment of life and property" as used in the clean air  
14 act's definition of "pollution." Therefore, it is the intent of the  
15 legislature to clarify that unreasonable interference with enjoyment  
16 of life and property, as those terms are used in the clean air act,  
17 includes unreasonable interference with the public's enjoyment and  
18 use of public properties including, but not limited to, bicycle or  
19 pedestrian trails, parks, and town commons.

1       **Sec. 2.** RCW 70A.15.1030 and 2020 c 20 s 1081 are each amended to  
2 read as follows:

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

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

8       (2) (a) "Air pollution" is presence in the outdoor atmosphere of  
9 one or more air contaminants in sufficient quantities and of such  
10 characteristics and duration as is, or is likely to be, injurious to  
11 human health, plant or animal life, or property, or which  
12 unreasonably interfere with enjoyment of life and property.

13       (b) For the purpose of this chapter, air pollution shall not  
14 include air contaminants emitted in compliance with chapter 17.21  
15 RCW.

16       (c) For the purpose of this chapter, "enjoyment of life and  
17 property" may include a person's use or enjoyment of a public park,  
18 public recreational facility or trail, or publicly owned commons of  
19 any municipal government or state agency.

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

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

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

27       (6) "Best available control technology" (BACT) means an emission  
28 limitation based on the maximum degree of reduction for each air  
29 pollutant subject to regulation under this chapter emitted from or  
30 that results from any new or modified stationary source, that the  
31 permitting authority, on a case-by-case basis, taking into account  
32 energy, environmental, and economic impacts and other costs,  
33 determines is achievable for such a source or modification through  
34 application of production processes and available methods, systems,  
35 and techniques, including fuel cleaning, clean fuels, or treatment or  
36 innovative fuel combustion techniques for control of each such a  
37 pollutant. In no event shall application of "best available control  
38 technology" result in emissions of any pollutants that will exceed  
39 the emissions allowed by any applicable standard under 40 C.F.R. Part  
40 60 and Part 61, as they exist on July 25, 1993, or their later

1 enactments as adopted by reference by the director by rule. Emissions  
2 from any source utilizing clean fuels, or any other means, to comply  
3 with this subsection shall not be allowed to increase above levels  
4 that would have been required under the definition of BACT as it  
5 existed prior to enactment of the federal clean air act amendments of  
6 1990.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22       (18) "Permit program source" means a source required to apply for  
23 or to maintain an operating permit under RCW 70A.15.2260.

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

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

39       (21) "Silvicultural burning" means burning of wood fiber on  
40 forestland consistent with the provisions of RCW 70A.15.5120.

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

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

9       (24) "Trigger level" means the ambient level of fine  
10 particulates, measured in micrograms per cubic meter, that must be  
11 detected prior to initiating a first or second stage of impaired air  
12 quality under RCW 70A.15.3580.

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