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**HOUSE BILL 1028**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Pollet, Farrell, and Appleton

AN ACT Relating to reducing air pollution associated with asphalt production in urban areas; amending RCW 70.94.370; adding a new section to chapter 70.94 RCW; adding a new section to chapter 46.61 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature recognizes the long tradition in Washington state of allowing local governments to take steps to preserve public health and safety within their jurisdictions. Furthermore, the legislature finds that in recognition of this tradition, state air regulations and traffic rules have long preserved certain authorities to local governments to adopt measures to protect public health and safety. Therefore, it is the intent of the legislature to ensure that cities retain proper latitude, via air regulations or traffic controls, to address risks to public health and safety that may be posed by certain industrial facilities that have a propensity for generating foul odors and nuisance complaints.

**Sec.**  RCW 70.94.370 and 1979 c 141 s 123 are each amended to read as follows:

No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town, or county to declare, prohibit, and abate nuisances, or on the power of a city to address nuisances or complaints regarding perceived nuisances by the methods described in section 3 of this act.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution.

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

In order to address nuisances or complaints regarding perceived nuisances, a city planning under RCW 36.70A.040 by ordinance may require a facility producing asphalt or asphalt products to enclose some or all of the production process, including the loading of finished asphalt or asphalt products into motor vehicles for transportation off-site. A city ordinance adopted under this section may require an enclosed asphalt production facility to control emissions through the application of appropriate emission controls or best management practices to reduce emissions, or both. An ordinance adopted pursuant to this section must provide that violations are subject to the penalties provided under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 46.61 RCW to read as follows:

(1) For the purposes of reducing public exposure to criteria pollutants regulated under chapter 70.94 RCW, a city planning under RCW 36.70A.040 by ordinance may require motor vehicles transporting a load of asphalt or asphalt products to cover the load in such a manner prescribed by the city. A city may apply the load covering requirements authorized in this section to all roads located within the boundaries of the city, including all highways, state highways, and city streets designated a part of the route of any state highway.

(2) Nothing in this section authorizes a city to require motor vehicles to secure a load of aggregate materials used in the production of asphalt if those aggregate materials do not contain petroleum-based materials. Nothing in this section affects the load covering requirements of RCW 46.61.655.

(3) A city imposing a requirement under subsection (1) of this section shall erect and maintain signs denoting the requirements of the ordinance at each end of the portion of any state highway affected by the ordinance. A city ordinance adopted under this section is not effective unless and until the signs are erected and maintained.

(4) An ordinance adopted pursuant to this section must provide that violations are subject to the penalties for traffic infractions provided under chapter 46.63 RCW.

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