

HOUSE BILL REPORT

HB 1167

As Reported by House Committee On:
Rural Development, Agriculture, & Natural Resources

Title: An act relating to protection of composting from nuisance lawsuits.

Brief Description: Concerning the protection of composting from nuisance lawsuits.

Sponsors: Representatives Walen, Blake, Chandler, Dent, Springer, Fitzgibbon, Jinkins, Goodman and Kloba.

Brief History:

Committee Activity:

Rural Development, Agriculture, & Natural Resources: 1/23/19, 2/6/19 [DP].

Brief Summary of Bill

- Provides that composting is presumed to be reasonable and does not constitute a nuisance if it meets certain specified criteria.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: Do pass. Signed by 10 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Orcutt, Pettigrew, Schmick and Walsh.

Minority Report: Without recommendation. Signed by 3 members: Representatives Shewmake, Vice Chair; Lekanoff and Ramos.

Staff: Robert Hatfield (786-7117).

Background:

Nuisance.

A nuisance is an activity that injures health, is indecent, offends decency, or in any way renders other persons insecure in life or in the use of property. In a nuisance lawsuit, a

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plaintiff may sue a property owner based on the claim that the property owner has made unreasonable use of his or her property to the detriment of the plaintiff's property.

Nuisance – Agricultural Activities Exemption.

Agricultural activities conducted on farmland are generally presumed to be reasonable and not a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. In order to be considered reasonable, and thus not a nuisance, the agricultural activities must be consistent with good agricultural practices and be established prior to surrounding nonagricultural activities. Agricultural activities that comply with all applicable laws and rules are presumed to be good agricultural practices that do not adversely affect the public health and safety.

Summary of Bill:

Notwithstanding any other portion of the nuisance statute, composting, if consistent with good agricultural or forest practices, established prior to surrounding nonagricultural or nonforestry activities, and in compliance with county and city regulations, is presumed to be reasonable and does not constitute a nuisance unless the activity or practice violates county or city regulations or has a substantial adverse effect on public health and safety.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Because of the investment in composting facilities, there has been a generational shift in the ability to compost on a massive scale. Washington is highly regulated with regard to compost; many states do not have any rules. The threat of litigation is stifling the future of composting. It would not be good to go back to the days of throwing grass clippings in the garbage. There are many odor-control technologies.

The compost industry supports the needs of local governments to reduce landfill volumes. Compost is a strong carbon reduction engine. Composting substantially reduces greenhouse gas emissions and reduces methane emissions. Composting's greenhouse gas emissions reductions are the equivalent of removing 40,000 vehicles from the road. It also improves water quality and aquatic habitat. One composting business invests in state-of-the-art technology to handle compost. Different odor-control technologies in use include cover systems, electric screening systems, and misters. An anaerobic digester is undergoing permitting. There have been no verified odor violations at an Everett composting facility for three years, and there was only one verified odor violation in 2018 at a composting facility in

Maple Valley. One composting business composts approximately 400,000 tons per year. The bill will protect the compost industry and the communities it serves. Nuisance lawsuits are usually based on some kind of an odor, and plaintiffs have to show that they have lost the enjoyment and use of their property.

(Opposed) The air near one compost facility near Issaquah stinks. Between 2010 and 2012 it did not smell so much, but in 2018, it smells. The odor of compost is noticeable on a weekly, if not daily, basis. Claims have been submitted to the health department and to the clean air agency. It does not make sense to protect the company that is causing the odor.

There is not a nuisance lawsuit problem, there is an odor problem. One company has a long history of violations from the Puget Sound Clean Air Agency. Neighbors have used litigation to discourage further odor violations. The health department has long been resistant to holding one facility to its permit. The health department agrees that one facility is frequently out of compliance. One compost facility was placed near established neighborhoods and schools. One compost facility does not use good agricultural practices. The bill is another attempt to silence victims. Children are subjected to the stench at school, and are held captive indoors by the odor, but they are still expected to play and learn like other kids.

Neighbors of one compost facility cannot go outside or entertain without being sickened by the smell. Efforts to reach out to governing agencies do not produce any results. This issue must be dealt with on a state-wide level in order to make the industry comply with regulations. Government agencies must be held accountable if they do not do their job. One compost facility affects the air in a five-mile radius. The bill is an insult to the people who have to live near a compost facility. In the summer, one neighbor of a compost facility cannot keep the windows open and has to use space heaters, rather than central heating, in the winter.

There is opposition to the bill because it reduces citizens' rights to protect their quality of life. One compost facility settled a class action lawsuit and had to spend \$1.45 million to reduce further noxious emissions. Another compost facility settled a lawsuit and had to spend \$3 million in mitigation. The bill is about protecting companies from their own actions.

Composting is important, but there is a problem with giving compost companies free rein. Companies should be required to have a system that contains odor. European countries use technology to contain odors. City and county regulations have not solved the problem for 30 years. The only protection is nuisance lawsuits.

In October 2018 and December 2013, one compost company settled two class action nuisance lawsuits that resulted in millions of dollars for mitigation.

There are times when it is impossible to be outside in the vicinity of a compost facility. There is a concern about pollution, because long-chain molecules get into the atmosphere and settle on plants. The scent transfers to plants and cars. People are afraid to be outside.

The odor is a sour smell. There are times when school kids cannot go out to play.

(Other) None.

Persons Testifying: (In support) Representative Walen, prime sponsor; Jay Blazey, City of Cedar Grove; and Susan Thoman, Compost Manufacturing Alliance.

(Opposed) Sarah McGoran; Leslie Morgan; Al Aldrich, Tulalip Tribes; Janey Dobrowolski; Elliot Paull; Karen Feser; and Ronald Olson.

Persons Signed In To Testify But Not Testifying: None.