S-3611.2

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**SENATE BILL 5876**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Short, Nguyen, Lovick, Nobles, and Saldaña

AN ACT Relating to noise standards for providers of essential services; amending RCW 70A.20.020, 70A.20.030, 70A.20.050, and 70A.20.060; adding a new section to chapter 70A.20 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that congestion upon the roadways of the state is increasing with major negative impacts on environmental, economic, and human health. Actions to increase the efficient utilization of our infrastructure and the resilience of communities can prevent and reduce the impacts of congestion, negative impacts to our environment, and improve the quality of life. Unreasonably limiting the provision of essential services increases congestion, carbon emissions, and economic costs.

(2) The legislature further finds that while enacted noise mitigation policies can be well-intended to reduce noise emissions and provide environmental benefits to communities, the policies may not do enough to balance all public health and environmental health concerns. Transportation activities account for more than 40 percent of the state's carbon emissions. Technological enhancements have improved to reduce noise emissions related to the provision, repair, and delivery of essential services. The legislature intends to create a policy to balance the noise mitigation needs and the necessity to reduce congestion and carbon emissions by utilizing the entire system more efficiently. Increased utilization of the current infrastructure system will significantly contribute to the reduction of carbon emissions that result in disproportionate health effects on low-income communities, communities of color, and the most vulnerable of our population.

(3) The legislature further finds that exercising a leadership role in addressing statewide noise mitigation combined with traffic management and congestion strategies will result in significant reductions of emissions and pollution. Additionally, the legislature intends for the department of ecology to participate in noise mitigation strategies with local government to ensure changes created under chapter 70A.20 RCW provide direct and meaningful benefits to communities. Finally, the legislature intends to prevent excessive noise pollution and provide protective measures if any community is adversely impacted by the transition to reduce carbon emissions and enhance transportation system utilization.

**Sec.**  RCW 70A.20.020 and 1974 ex.s. c 183 s 2 are each amended to read as follows:

((~~As used in this chapter,~~)) The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise((~~:~~)).

(1) "Department" means the department of ecology.

(2) "Director" means director of the department of ecology.

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

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

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

(6) "dBA" means the sound pressure level, in decibels, of a sound using the "A" weighting network on a sound level meter.

(7) "Essential services" means the provision, repair, or delivery of utility, telecommunications, food, water, or sanitary services.

(8) "Receiving property" means real property within which the maximum permissible noise levels established under this chapter may not be exceeded from sources outside the property.

(9) "Sound level meter" means a device that measures sound pressure levels and conforms to type 1 or type 2 as specified in the American national standards institute specification S1.4-1971.

**Sec.**  RCW 70A.20.030 and 2011 c 171 s 107 are each amended to read as follows:

The department is empowered as follows:

(1) ((~~The~~)) Except as provided for essential services in section 6 of this act, the department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.310 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975.

**Sec.**  RCW 70A.20.050 and 1987 c 103 s 2 are each amended to read as follows:

(1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed ((~~one hundred dollars~~)) $100 imposed by local government pursuant to this section. ((~~An~~)) Except as provided for essential services in section 6 of this act, an action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable ((~~thirty~~)) 30 days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

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

**Sec.**  RCW 70A.20.060 and 1987 c 103 s 1 are each amended to read as follows:

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

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

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. ((~~A~~)) Except as provided for essential services in section 6 of this act, a local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ((~~ninety~~)) 90 days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

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

NEW SECTION. **Sec.**  A new section is added to chapter 70A.20 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, a provider of essential services may exceed an allowable noise level established by a local government by up to 10 dBA, but not to exceed a maximum noise level of 80 dBA as measured by a sound level meter.

(2) The department may allow for noise limitations to be exceeded for any receiving property by no more than:

(a) Five dBA for a total of 15 minutes in any one-hour period;

(b) Ten dBA for a total of five minutes in any one-hour period; or

(c) Fifteen dBA for a total of 90 seconds in any one-hour period.

(3) Noise complaints related to the provision of essential services must be investigated by the local government, measured with a sound level meter from the complainant's receiving property by the local government, and reported by the local government to the department.

(4) If a provider of essential services is found to have violated the noise standards established in this section, the provider of essential services must submit a noise management and mitigation plan to the department and local government for the individual location found to be in violation in order to mitigate noise above allowable levels.

(5) A provider of essential services that fails to comply with noise standards on three or more occurrences, during any 12-month period, must install equipment to monitor noise levels at the individual location. The provider shall allow the department and local government to access noise monitoring records.

(6) A provider of essential services that fails to comply with noise standards on six or more occurrences, during any 12-month period, may be subject to local government noise laws, regulations, and ordinances.

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