

(2) Section 5, chapter 288, Laws of 1971 ex. sess., section 3, chapter 126, Laws of 1972 ex. sess. and RCW 84.36.380.

NEW SECTION. Sec. 7. Sections 1 through 5 of this 1974 amendatory act are each added to chapter 84.36 RCW.

NEW SECTION. Sec. 8. If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 23, 1974.  
Passed the House April 23, 1974.  
Approved by the Governor May 5, 1974.  
Filed in Office of Secretary of State May 5, 1974.

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CHAPTER 183

[ Engrossed Substitute Senate Bill No. 2906 ]

NOISE ABATEMENT AND CONTROL

AN ACT Relating to noise abatement and control; adding a new chapter to Title 70 RCW; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Section 1. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts state-wide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field.

NEW SECTION. Sec. 2. As used in 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.

NEW SECTION. Sec. 3. The department is empowered as follows:

(1) 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: PROVIDED FURTHER, That all agricultural equipment and machinery shall be exempt from the requirements of this act.

(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 46.09.020 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.

NEW SECTION. Sec. 4. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement as provided in RCW 43.03.050 and 43.03.060, as now or hereafter amended.

NEW SECTION. Sec. 5. (1) Any person who knowingly and willfully violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars. All violations of this act shall be administered pursuant to the provisions of RCW 34.04, the state administrative procedures act.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed 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 pollution control hearings board shall become due and payable on the issuance of said 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 general shall, upon request of the director, bring an action in the name of the state of Washington, in the superior court of Thurston county or in 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. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

NEW SECTION. Sec. 6. (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 work places of the state, as now or hereafter vested in the department of labor and industries.

(3) No local government shall adopt resolutions, ordinances, rules or regulations concerned with the control of noise which shall be effective prior to adoption of maximum noise levels and the rules adopted by the department pursuant to this chapter or January 31, 1975, whichever occurs sooner. Such resolutions, ordinances, rules, or regulations must be consistent with section 6 (4) of this 1974 act.

(4) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. 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. No such noise limiting requirements of local government shall be valid unless first approved by the department. 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. In the determination of whether to grant any such approval, the department shall give consideration to the reasonableness and practicability of compliance with particular attention to the situation of stationary sources, the noise producing operations of which are conducted at or near jurisdictional boundaries.

(5) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.04 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. 7. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state commission on equipment. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of section 5 of this 1974 act.

NEW SECTION. Sec. 8. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency

or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government.

NEW SECTION. Sec. 9. All rules and regulations adopted pursuant to the requirements of this chapter, except emergency rules adopted pursuant to RCW 34.04.030, shall be submitted by the adopting agency to the standing rules committees of the legislature at least twenty days before such rules are filed with the code reviser pursuant to chapter 34.04 RCW. The standing rules committees shall refer such rules to the appropriate standing committees of the senate and the house of representatives, or to a joint committee designated by the standing rules committees for substantive review and approval.

If the appropriate committee of the senate and house of representatives or joint committee has failed to approve a rule or agency regulation submitted to it within thirty days after such submission, the code reviser may file such rule or regulation if the attorney representing the agency involved files an affidavit of nonaction by the appropriate committee of the senate or house stating that no action was taken within the thirty day period specified herein.

If the appropriate committees shall reject a proposed rule as not being within the intent of the statute purporting to authorize the adoption thereof, such rejection shall be by majority vote of all the members of both such committees or of the joint committee. The agency affected shall be notified of such rejection and the reasons therefor, and the effective date of the rules suspended for a maximum of thirty days. If at the end of thirty days the agency affected and the appropriate legislative committees have not reached agreement as to the form or content of the proposed rule, such agency rule shall become effective as provided in chapter 34.04 RCW and the appropriate committees shall report to the code reviser any proposal for corrective action by the legislature.

NEW SECTION. Sec. 10. There is added to Title 70 RCW a new chapter to read as set forth in sections 1 through 9 of this 1974 act.

NEW SECTION. Sec. 11. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This 1974 act shall be known and may be cited as the "Noise Control Act of 1974".

NEW SECTION. Sec. 13. This 1974 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions, and shall take effect immediately.

Passed the Senate April 23, 1974.

Passed the House April 23, 1974.

Approved by the Governor May 6, 1974, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 6, 1974.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to certain items Engrossed Substitute Senate Bill No. 2906 entitled:

"AN ACT Relating to noise abatement and control." Veto  
Message

Section 3 contains an item that would exempt from the requirements of this act all agricultural equipment and machinery. While recognizing that agricultural equipment and machinery may not impact the environment insofar as noise is concerned to the same extent as industrial and other equipment, the blanket exemption granted in this bill is unwarranted. The same section specifically mandates the Department of Ecology to take into account, when adopting noise standards, such factors as economic and practical benefits, the relative permanency of the source of noise, and the technological status of such sources. If the department proves unwilling or unable to take proper consideration of these factors in respect to agricultural equipment and machinery, the legislature may well enact such an exemption in the future. For these reasons, I have determined to veto the referenced item.

Section 5 prescribes a civil penalty in an amount not to exceed one hundred dollars for each violation of a rule or standard promulgated pursuant to the act. The applicability of the penalty is substantially reduced by an item requiring the violation to be knowing and wilful, thus approximating the intent required for criminal sanctions. A similar civil penalty provision can be found in several other statutes such as the Water Pollution Control Act (RCW 90.48.142), the Air Pollution Control Act (RCW 70.94.431), and the recently enacted Forest Practices Act (Section 17, chapter 137, Laws of 1974 Third Extraordinary Session). None of these other acts cited require that a violation be knowing and wilful for the application of the civil penalty. Accordingly, I have vetoed the referenced item.

Section 9, which provides an elaborate legislative review procedure over rules and regulations adopted under the act, violates the fundamentals of good government by interposing legislative interference in the administrative process. The legislature will always have the prerogative to set, by legislation, basic policy and such guidelines as may be needed for its implementation. Having done so, however, an administrative agency must be entrusted to carry out its delegated functions without having to seek legislative approval at every turn of the decision-making process. Accordingly, I have determined to veto section 9.

With the foregoing exceptions, I have approved the remainder of Engrossed Substitute Senate Bill No. 2906."