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**SUBSTITUTE HOUSE BILL 2326**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House Environment (originally sponsored by Representatives Jenkins, Ladenburg, Darneille, Fitzgibbon, Upthegrove, Seaquist, Moscoso, Green, Kagi, Billig, Tharinger, Pollet, Wylie, Reykdal, McCoy, Eddy, Hunt, and Lytton)

READ FIRST TIME 01/27/12.

1       AN ACT Relating to protecting air quality that is impacted by high  
2 emitting solid fuel burning devices; amending RCW 70.94.473 and  
3 70.94.477; adding a new section to chapter 70.94 RCW; and providing an  
4 expiration date.

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

6       **Sec. 1.** RCW 70.94.473 and 2008 c 40 s 1 are each amended to read  
7 as follows:

8       (1) Any person in a residence or commercial establishment which has  
9 an adequate source of heat without burning wood shall:

10       (a) Not burn wood in any solid fuel burning device whenever the  
11 department has determined under RCW 70.94.715 that any air pollution  
12 episode exists in that area;

13       (b) Not burn wood in any solid fuel burning device except those  
14 which are either Oregon department of environmental quality phase II or  
15 United States environmental protection agency certified or certified by  
16 the department under RCW 70.94.457(1) or a pellet stove either  
17 certified or issued an exemption by the United States environmental  
18 protection agency in accordance with Title 40, Part 60 of the code of  
19 federal regulations, in the geographical area and for the period of

1 time that a first stage of impaired air quality has been determined, by  
2 the department or any authority, for that area. A first stage of  
3 impaired air quality is reached when forecasted meteorological  
4 conditions are predicted to cause fine particulate levels to reach or  
5 exceed (~~((thirty-five))~~) thirty micrograms per cubic meter, measured on  
6 a twenty-four hour average, within (~~((forty-eight))~~) seventy-two hours;  
7 and

8 (c)(i) Not burn wood in any solid fuel burning device in a  
9 geographical area and for the period of time that a second stage of  
10 impaired air quality has been determined by the department or any  
11 authority, for that area. A second stage of impaired air quality is  
12 reached when a first stage of impaired air quality has been in force  
13 and has not been sufficient to reduce the increasing fine particulate  
14 pollution trend, fine particulates are at an ambient level of twenty-  
15 five micrograms per cubic meter measured on a twenty-four hour average,  
16 and forecasted meteorological conditions are not expected to allow  
17 levels of fine particulates to decline below twenty-five micrograms per  
18 cubic meter for a period of twenty-four hours or more from the time  
19 that the fine particulates are measured at the trigger level.

20 (ii) A second stage burn ban may be called without calling a first  
21 stage burn ban only when all of the following occur and shall require  
22 the department or the local air pollution control authority calling a  
23 second stage burn ban under this subsection to comply with the  
24 requirements of subsection (~~((+4))~~) (3) of this section:

25 (A) Fine particulate levels have reached or exceeded twenty-five  
26 micrograms per cubic meter, measured on a twenty-four hour average;

27 (B) Meteorological conditions have caused fine particulate levels  
28 to rise rapidly;

29 (C) Meteorological conditions are predicted to cause fine  
30 particulate levels to reach or exceed the (~~((thirty-five))~~) thirty  
31 micrograms per cubic meter, measured on a twenty-four hour average,  
32 within twenty-four hours; and

33 (D) Meteorological conditions are highly likely to prevent  
34 sufficient dispersion of fine particulate.

35 (2) Actions of the department and local air pollution control  
36 authorities under this section shall preempt actions of other state  
37 agencies and local governments for the purposes of controlling air

1 pollution from solid fuel burning devices, except where authorized by  
2 chapter 199, Laws of 1991.

3 (3) The department or any local air pollution control authority  
4 that has called a second stage burn ban under the authority of  
5 subsection (1)(c)(ii) of this section shall, within ninety days,  
6 prepare a written report describing:

7 (a) The meteorological conditions that resulted in their calling  
8 the second stage burn ban;

9 (b) Whether the agency could have taken actions to avoid calling a  
10 second stage burn ban without calling a first stage burn ban; and

11 (c) Any changes the department or authority is making to its  
12 procedures of calling first stage and second stage burn bans to avoid  
13 calling a second stage burn ban without first calling a first stage  
14 burn ban.

15 After consulting with affected parties, the department shall  
16 prescribe the format of such a report and may also require additional  
17 information be included in the report. All reports shall be sent to  
18 the department and the department shall keep the reports on file for  
19 not less than five years and available for public inspection and  
20 copying in accordance with RCW 42.56.090.

21 ~~((4) The department and local air pollution control authorities  
22 shall evaluate the effectiveness of the burn ban programs contained in  
23 this section in avoiding fine particulate levels to exceed thirty five  
24 micrograms per cubic meter, measured on a twenty four hour average, and  
25 provide a joint report of the results to the legislature by September  
26 1, 2011.))~~

27 **Sec. 2.** RCW 70.94.477 and 2009 c 282 s 1 are each amended to read  
28 as follows:

29 (1) Unless allowed by rule under chapter 34.05 RCW, a person shall  
30 not cause or allow any of the following materials to be burned in any  
31 residential solid fuel burning device:

32 (a) Garbage;

33 (b) Treated wood;

34 (c) Plastics;

35 (d) Rubber products;

36 (e) Animals;

37 (f) Asphaltic products;

1 (g) Waste petroleum products;

2 (h) Paints; or

3 (i) Any substance, other than properly seasoned fuel wood, which  
4 normally emits dense smoke or obnoxious odors. For the purposes of  
5 this section, "seasoned fuel wood" means firewood for use in a solid  
6 fuel burning device that has a moisture content of no more than twenty  
7 percent.

8 (2) To achieve and maintain attainment in areas of nonattainment  
9 for fine particulates in accordance with section 172 of the federal  
10 clean air act, a local air pollution control authority or the  
11 department may, after meeting requirements in subsection (3) of this  
12 section, prohibit the use of solid fuel burning devices, except:

13 (a) Fireplaces as defined in RCW 70.94.453(3), except if needed to  
14 meet federal requirements as a contingency measure in a state  
15 implementation plan for a fine particulate nonattainment area;

16 (b) Woodstoves meeting the standards set forth in RCW  
17 70.94.473(1)(b); or

18 (c) Pellet stoves.

19 (3) Prior to prohibiting the use of solid fuel burning devices  
20 under subsection (2) of this section, the department or the local air  
21 pollution control authority must:

22 (a) Seek input from any city, county, or jurisdictional health  
23 department affected by the proposal to prohibit the use of solid fuel  
24 burning devices; and

25 (b) Make written findings that:

26 (i) The area is designated as an area of nonattainment for fine  
27 particulate matter by the United States environmental protection  
28 agency, or is in maintenance status under that designation;

29 (ii) Emissions from solid fuel burning devices in the area are a  
30 major contributing factor for violating the national ambient air  
31 quality standard for fine particulates; and

32 (iii) The area has an adequately funded program to assist low-  
33 income households to secure an adequate source of heat, which may  
34 include woodstoves meeting the requirements of RCW 70.94.453(2).

35 (4) If and only if the nonattainment area is within the  
36 jurisdiction of the department and the legislative authority of a city  
37 or county within the area of nonattainment formally expresses concerns  
38 with the department's written findings, then the department must

1 publish on the department's web site the reasons for prohibiting the  
2 use of solid fuel burning devices under subsection (2) of this section  
3 that includes a response to the concerns expressed by the city or  
4 county legislative authority.

5 (5) When a local air pollution control authority or the department  
6 prohibits the use of solid fuel burning devices as authorized by this  
7 section, the cities, counties, and jurisdictional health departments  
8 serving the area shall cooperate with the department or local air  
9 pollution control authority as the department or the local air  
10 pollution control authority implements the prohibition. (~~However,~~  
11 ~~cooperation shall not include enforcement of this prohibition.~~) The  
12 responsibility for actual enforcement of the prohibition shall reside  
13 solely with the department or the local air pollution control  
14 authority. A city, county, or jurisdictional health department serving  
15 the area may agree to assist with enforcement activities.

16 (6) A prohibition issued by a local air pollution control authority  
17 or the department under this section shall not apply to a person in a  
18 residence or commercial establishment that does not have an adequate  
19 source of heat without burning wood.

20 (7) As used in this section((7)):

21 (a) "Jurisdictional health department" means a city, county, city-  
22 county, or district public health department.

23 (b) "Prohibit the use" or "prohibition" may include requiring  
24 disclosure, removal, rendering inoperable, providing evidence of  
25 destruction, or other similar requirements as may be approved by rule  
26 by a local air pollution control authority or the department.

27 NEW SECTION. Sec. 3. A new section is added to chapter 70.94 RCW  
28 to read as follows:

29 (1) The department of ecology and local air pollution control  
30 authorities shall report back to the appropriate standing committees of  
31 the legislature by December 31, 2014, and every two years thereafter,  
32 on progress toward achieving attainment for areas of nonattainment that  
33 the revised burn ban and prohibition requirements contained in RCW  
34 70.94.473 and 70.94.477 were enacted to address, as well as whether  
35 other implementation tools are necessary to achieve attainment.

1 (2) This section expires January 1, 2019.

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