
SUBSTITUTE HOUSE BILL 2785

State of Washington

64th Legislature

2016 Regular Session

By House Environment (originally sponsored by Representatives Shea, Short, Schmick, Taylor, Scott, and McCaslin)

1 AN ACT Relating to ensuring that restrictions on the use of solid
2 fuel burning devices do not prohibit the installation or replacement
3 of solid fuel burning devices or the use of these devices during
4 temporary outages of other sources of heat; and amending RCW
5 70.94.473 and 70.94.477.

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

7 **Sec. 1.** RCW 70.94.473 and 2012 c 219 s 1 are each amended to
8 read as follows:

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

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

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

1 the period of time that a first stage of impaired air quality has
2 been determined, by the department or any authority, for that area.

3 (i) A first stage of impaired air quality is reached when
4 forecasted meteorological conditions are predicted to cause fine
5 particulate levels to exceed thirty-five micrograms per cubic meter,
6 measured on a twenty-four hour average, within forty-eight hours,
7 except for areas of fine particulate nonattainment or areas at risk
8 for fine particulate nonattainment;

9 (ii) A first stage burn ban for impaired air quality may be
10 called for a county containing fine particulate nonattainment areas
11 or areas at risk for fine particulate nonattainment, and when
12 feasible only for the necessary portions of the county, when
13 forecasted meteorological conditions are predicted to cause fine
14 particulate levels to reach or exceed thirty micrograms per cubic
15 meter, measured on a twenty-four hour average, within seventy-two
16 hours; and

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

30 (ii) A second stage burn ban may be called without calling a
31 first stage burn ban only when all of the following occur and shall
32 require the department or the local air pollution control authority
33 calling a second stage burn ban under this subsection to comply with
34 the requirements of subsection (3) of this section:

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

37 (B) Meteorological conditions have caused fine particulate levels
38 to rise rapidly;

39 (C) Meteorological conditions are predicted to cause fine
40 particulate levels to exceed the thirty-five micrograms per cubic

1 meter, measured on a twenty-four hour average, within twenty-four
2 hours; and

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

5 (iii) In fine particulate nonattainment areas or areas at risk
6 for fine particulate nonattainment, a second stage burn ban may be
7 called for the county containing the nonattainment area or areas at
8 risk for nonattainment, and when feasible only for the necessary
9 portions of the county, without calling a first stage burn ban only
10 when (c)(ii)(A), (B), and (D) of this subsection have been met and
11 meteorological conditions are predicted to cause fine particulate
12 levels to reach or exceed thirty micrograms per cubic meter, measured
13 on a twenty-four hour average, within twenty-four hours.

14 (2) Actions of the department and local air pollution control
15 authorities under this section shall preempt actions of other state
16 agencies and local governments for the purposes of controlling air
17 pollution from solid fuel burning devices, except where authorized by
18 chapter 199, Laws of 1991.

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

23 ((+a)) (i) The meteorological conditions that resulted in their
24 calling the second stage burn ban;

25 ((+b)) (ii) Whether the agency could have taken actions to avoid
26 calling a second stage burn ban without calling a first stage burn
27 ban; and

28 ((+c)) (iii) Any changes the department or authority is making
29 to its procedures of calling first stage and second stage burn bans
30 to avoid calling a second stage burn ban without first calling a
31 first stage burn ban.

32 (b) After consulting with affected parties, the department shall
33 prescribe the format of such a report and may also require additional
34 information be included in the report. All reports shall be sent to
35 the department and the department shall keep the reports on file for
36 not less than five years and available for public inspection and
37 copying in accordance with RCW 42.56.090.

38 (4) For the purposes of chapter 219, Laws of 2012, an area at
39 risk for nonattainment means an area where the three-year average of
40 the annual ninety-eighth percentile of twenty-four hour fine

1 particulate values is greater than twenty-nine micrograms per cubic
2 meter, based on the years 2008 through 2010 monitoring data.

3 (5)(a) Nothing in this section restricts a person from installing
4 or repairing a certified solid fuel burning device approved by the
5 department under the program established under RCW 70.94.457 in a
6 residence or commercial establishment or from replacing a solid fuel
7 burning device with a certified solid fuel burning device. Nothing in
8 this section restricts a person from burning wood in a solid fuel
9 burning device, regardless of whether a burn ban has been called, if
10 there is an emergency power outage. In addition, for the duration of
11 an emergency power outage, nothing restricts the use of a solid fuel
12 burning device or the temporary installation, repair, or replacement
13 of a solid fuel burning device to prevent the loss of life, health,
14 or business.

15 (b) For the purposes of this subsection and subsection (6) of
16 this section, an emergency power outage includes:

17 (i) Any natural or human-caused event that leaves a residence or
18 commercial establishment temporarily without an adequate source of
19 heat other than the solid fuel burning device; or

20 (ii) A natural or human-caused event for which the governor
21 declares an emergency in an area under chapter 43.06 RCW, including a
22 public disorder, disaster, or energy emergency under RCW
23 43.06.010(12).

24 (6) A nonprevailing petitioner that challenges the use of a solid
25 fuel burning device in an emergency power outage must pay the
26 reasonable expenses, including attorneys' fees, incurred in opposing
27 the challenge to the use of the solid fuel burning device during the
28 emergency power outage. The court with jurisdiction must require the
29 payment of these reasonable expenses upon the dismissal of the
30 petitioner's challenge. However, nothing in this section may be
31 construed to shield a party from liability for damages associated
32 with the use of a solid fuel burning device.

33 **Sec. 2.** RCW 70.94.477 and 2012 c 219 s 2 are each amended to
34 read as follows:

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

38 (a) Garbage;

39 (b) Treated wood;

- 1 (c) Plastics;
- 2 (d) Rubber products;
- 3 (e) Animals;
- 4 (f) Asphaltic products;
- 5 (g) Waste petroleum products;
- 6 (h) Paints; or
- 7 (i) Any substance, other than properly seasoned fuel wood, which
- 8 normally emits dense smoke or obnoxious odors.

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

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

18 (b) Woodstoves meeting the standards set forth in RCW
19 70.94.473(1)(b); or

20 (c) Pellet stoves.

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

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

27 (b) Make written findings that:

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

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

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

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

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

5 (5) When a local air pollution control authority or the
6 department prohibits the use of solid fuel burning devices as
7 authorized by this section, the cities, counties, and jurisdictional
8 health departments serving the area shall cooperate with the
9 department or local air pollution control authority as the department
10 or the local air pollution control authority implements the
11 prohibition. The responsibility for actual enforcement of the
12 prohibition shall reside solely with the department or the local air
13 pollution control authority. A city, county, or jurisdictional health
14 department serving a fine particulate nonattainment area may agree to
15 assist with enforcement activities.

16 (6) A prohibition issued by a local air pollution control
17 authority or the department under this section shall not apply to:

18 (a) A person in a residence or commercial establishment that does
19 not have an adequate source of heat without burning wood; or

20 (b) A person with a shop or garage that is detached from the main
21 residence or commercial establishment that does not have an adequate
22 source of heat in the detached shop or garage without burning wood.

23 (7) On June 7, 2012, and prior to January 1, 2015, the local air
24 pollution control authority or the department shall, within available
25 resources, provide assistance to households using solid fuel burning
26 devices to reduce the emissions from those devices or change out to a
27 lower emission device. Prior to the effective date of a prohibition,
28 as defined in this section, on the use of uncertified stoves, the
29 department or local air pollution control authority shall provide
30 public education in the nonattainment area regarding how households
31 can reduce their emissions through cleaner burning practices, the
32 importance of respecting burn bans, and the opportunities for
33 assistance in obtaining a cleaner device. If the area is designated
34 as a nonattainment area as of January 1, 2015, or if required by the
35 United States environmental protection agency, the local air
36 pollution control authority or the department may prohibit the use of
37 uncertified devices.

38 (8) As used in this section:

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

1 (b) "Prohibit the use" or "prohibition" may include requiring
2 disclosure of an uncertified device, removal, or rendering
3 inoperable, as may be approved by rule by a local air pollution
4 control authority or the department. The effective date of such a
5 rule may not be prior to January 1, 2015. However, except as provided
6 in RCW 64.06.020 relating to the seller disclosure of wood burning
7 appliances, any such prohibition may not include imposing separate
8 time of sale obligations on the seller or buyer of real estate as
9 part of a real estate transaction.

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