

# HOUSE BILL REPORT

## ESHB 1028

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*As Amended by the Senate*

**Title:** An act relating to reducing air contaminant emissions and improving air quality.

**Brief Description:** Making major changes to air quality laws.

**Sponsor(s):** By House Committee on Environmental Affairs (originally sponsored by Representatives Pruitt, Horn, Rust, Heavey, Anderson, Wineberry, Phillips, Wang, Sprenkle, Jones, Prentice, Fraser, Nelson, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine and Brekke; by request of Governor Gardner).

**Brief History:**

Reported by House Committee on:  
Environmental Affairs, March 4, 1991, DPS;  
Revenue, March 10, 1991, DPS(ENA)-A;  
Passed House, March 15, 1991, 65-31;  
Amended by Senate.

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**HOUSE COMMITTEE ON  
ENVIRONMENTAL AFFAIRS**

**Majority Report:** *That Substitute House Bill No. 1028 be substituted therefor, and the substitute bill do pass.*  
Signed by 8 members: Representatives Rust, Chair; Valle, Vice Chair; Bray; Brekke; G. Fisher; Phillips; Pruitt; and Sprenkle.

**Minority Report:** *Do not pass.* Signed by 4 members: Representatives Horn, Ranking Minority Member; Edmondson, Assistant Ranking Minority Member; Neher; and Van Luven.

**Staff:** Rick Anderson (786-7114).

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**HOUSE COMMITTEE ON  
REVENUE**

**Majority Report:** *The substitute bill by Committee on Environmental Affairs be substituted therefor and the substitute bill as amended by Committee on Revenue do pass.*  
Signed by 9 members: Representatives Wang, Chair; Fraser, Vice Chair; Appelwick; Belcher; Day; Leonard; Morris; Phillips; and Rust.

**Minority Report:** *Do not pass.* Signed by 6 members: Representatives Holland, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Brumsickle; Morton; Silver; and Van Luven.

**Staff:** Robin Appleford (786-7093).

**Background:** This past year, Congress passed the first major revisions to the Federal Clean Air Act in two decades. The 1990 federal act is very prescriptive for areas that do not meet federal air quality standards. These areas are required to implement various control strategies by specified dates or face automatic sanctions. Depending on the pollutant, these sanctions include: additional emission control programs, possible curtailment of new construction, and pollution reduction requirements on existing industries.

The federal act requires states to have operating permits for certain industrial sources, including all sources emitting 100 or more tons of regulated pollutants per year. Washington is one of the few states in the country that does not require major sources of air pollution to have an operating permit. Under the act, a permitted source will be reviewed a minimum of every five years. At such time, the industrial source may be required to further reduce emissions, depending on the severity of local air quality and the availability of new technology. Permitted sources will be required to pay fees, based on the amount of pollutants emitted, to cover all the direct and indirect costs of the operating permit program.

The federal act also requires permitted sources to install pollution control technology. New or modified industrial sources are required to meet "lowest achievable emission reductions" (LAER) standards in non-attainment areas and "best available control technology" (BACT) standards in attainment areas. Existing industrial sources must meet "reasonably available control technology" (RACT) standards. LAER is a more stringent and more expensive standard than BACT. BACT is a more stringent and generally more expensive standard than RACT.

The federal act addresses pollution from motor vehicles through a number of provisions, including tighter emission specifications for fuel and vehicles. Additionally, all areas not meeting federal standards for carbon monoxide and ozone are required to test vehicle emissions. This provision will expand this state's current inspection and maintenance program, currently in effect for the greater Seattle and Spokane areas, to the urban area from Everett to Tacoma, and the greater Vancouver area.

The federal act also contains a number of provisions to address toxic air pollutants, global warming, acid rain, civil and criminal penalties, citizen suits, and research and development.

In this state, air pollution is increasingly recognized as a serious environmental threat. Last year, citizens and representatives from several state and federal agencies independently cited air pollution as the state's top environmental problem during the governor's Environment 2010 project.

Washington currently has 13 areas, located across the state, officially designated as "non-attainment" areas - areas that do not meet federal air quality standards. Several other areas in the state are suspected of not meeting federal standards. The Department of Ecology estimates that 3 million people in the state live in areas with unhealthy levels of air pollution.

Though individual areas may differ considerably, the statewide annual average contribution to air pollution is as follows: motor vehicles 45 percent, industrial sources 25 percent, woodstoves and fireplaces 20 percent, and outdoor burning 10 percent.

Air pollution is regulated at the local level by counties or groups of counties known as local air pollution control authorities. If a county chooses not to form a local air authority, the area is regulated by the Department of Ecology. In addition, the department has exclusive authority over air pollution from certain facilities, such as pulp mills and aluminum smelters.

***Summary of Bill:***

**GOALS AND PUBLIC POLICY:**

A number of legislative findings and goals are established. These sections generally reflect three principles: 1) all air polluters should pay for the costs of air pollution; 2) state laws should prevent deterioration of air quality; and 3) state government should be a role model in reducing air pollution.

**MOTOR VEHICLES AND FUELS:**

Inspection and Maintenance (I&M) Program

Diesel-powered cars and trucks are included in the inspection program. The I&M program shall remain biennial unless the Environmental Protection Agency (EPA) requires an annual program. State agencies outside inspection boundaries will be required to annually inspect vehicle

emissions if the agency has a fleet of 20 or more vehicles. A legislative task force is created to help low-income persons owning older cars with excess vehicle emissions to purchase newer, less-polluting vehicles. The January 1, 1993 termination date of the I&M program is deleted. House and Senate committees are no longer involved in reviewing I&M boundaries. Motor vehicle dealers in non-attainment areas must disclose certain information to car buyers relating to the vehicle emission tests.

#### Alternative Fuels

The Department of Ecology (Ecology) is directed to develop emission specifications for clean-fuels and clean-fuel vehicles. At least 30 percent of vehicles purchased through a state contract must be designated as clean fuel vehicles. Beginning in 1992, the Department of Ecology and other state agencies are to prepare a biennial report on the effectiveness of the procurement program. The Utilities and Transportation Commission is directed to identify barriers to establishing re-fueling stations for compressed natural gas and to consider rate incentives to encourage private gas companies to invest in such re-fueling stations. Ecology may disburse matching grants to local governments to offset the costs of purchase or operation of clean fuel vehicles used for public transit. The Superintendent of Public Instruction is to conduct a study on the feasibility of using compressed natural gas as a school bus fuel.

#### Conformity

Transportation plans, programs, and projects must conform with state plans for the purpose of meeting and maintaining federal air quality standards. Ecology and the Department of Transportation must adopt rules to establish conformity criteria. Projects that preserve or maintain a roadway are exempt from conformity requirements.

#### Commute Trip Reduction Plans

By July 1, 1992, counties with a population of 150,000 or more and cities within those counties are required to submit plans to reduce commuting trips to the workplace. Any county, city, or town may voluntarily develop a commute trip reduction plan. Ecology may require areas in a federal non-attainment area to develop a plan. Plans adopted by local governments must initially require employers of 100 persons or more, or sites employing 100 persons or more, to implement a program to reduce peak-hour commuter traffic. After July 1996, plans must include employers and worksites with 50 or more employees. Local plans must achieve a 15 percent reduction in peak hour traffic by January 1994, a 25 percent reduction by 1996, and a 35 percent reduction by 1998. The Commute Trip Reduction Task Force must consider

progress made by employers in reducing commute trips before implementing the commute trip reduction program.

Local plans must be consistent with guidelines developed by a state task force. A technical assistance team is created to help local governments to develop plans. The state task force must make periodic reports to the Legislature on the costs and benefits of commute trip reduction plans. Civil penalties may be assessed by local governments for employers failing to submit, modify, or implement a plan as directed by a local government.

An interagency task force is created to develop trip reduction plans for state facilities. State agencies employing 100 or more persons or those considered a major worksite must develop a program to implement the plan. The Department of General Administration is required to submit an annual progress report to the task force by April 1, 1993, and every year thereafter.

#### Motor Vehicle Registration Fee

A \$4.25 vehicle registration fee is added to all registered vehicles. The air pollution control account is created. Funds from the additional \$4.25 registration fee are deposited into the account.

#### Emission Standards/Solar Cars

Ecology is directed to adopt rules implementing California vehicle emission standards if it finds that such standards will benefit the state's air quality. Ecology is directed to contract with Western Washington University to conduct research and development on solar cars and other clean fuel vehicles.

#### **INDUSTRIAL AND COMMERCIAL SOURCES:**

Ecology and local air authorities are required to issue renewable operating permits to: 1) sources required to have permits under federal law; and 2) sources in areas of poor air quality if identified by Ecology or a local air authority as a public health threat.

New and modified sources are required to meet the LAER standard in non-attainment areas and the BACT standard in attainment areas; existing sources are required to meet the BACT emission standard. The LAER requirement applies only to those pollutants causing the area to be in non-attainment. Existing sources must meet the RACT emission standard in attainment and non-attainment areas.

For calendar years 1991 and 1992, a \$10 interim fee is imposed on sources emitting 100 or more tons of a regulated

pollutant. Eight dollars will go to Ecology for developing the operating permit program; \$2 will go to local air authorities for their costs in developing the permit program. Ecology and delegated local air authorities must set fees, by rule, for their costs in implementing or overseeing the operating permit program. In 1993, the Legislature is to review fees developed by Ecology.

Ecology must develop recommendations to reduce air emissions for sources that emit 10 or more tons of a criteria pollutant or that emit one or more tons of a toxic pollutant and are not subject to industrial permits.

Ecology may require, by rule, sources to install generic technology requirements. Such rules must account for the remaining useful life of any existing control technology that an affected source has previously installed. Ecology is directed to provide information and technical assistance to help small businesses comply with the provisions of this act.

Persons guilty of violating the State Clean Air Act or the inspection and maintenance program are subject to a fine of up to \$10,000 and the cost of investigation and prosecution, or by imprisonment of up to one year, or both fine and imprisonment. Persons who knowingly release hazardous pollutants in violation of the act, are subject to a fine of up to \$50,000 and/or imprisonment of up to five years. Civil penalties are increased from \$1,000 per day to \$10,000 per day. Other enforcement actions are specified. A science advisory board is created to recommend methods to evaluate the risks associated with toxic air pollutants.

#### **OUTDOOR BURNING:**

Outdoor burning is prohibited in: 1) areas that exceed federal air quality standards for pollutants emitted by outdoor burning; 2) urban growth areas as defined in the Growth Management Act; and 3) cities of 10,000 or more if the city is threatened to exceed federal standards and has a alternative disposal option readily available.

#### Silvicultural Burning

The Department of Natural Resources (DNR) must administer a program to reduce silvicultural slash burn emissions 20 percent by 1994, and 50 percent by 2000. Emission reductions apply to all forest lands, including those owned by the U.S. Forest Service. DNR must take actions to limit emissions if goals are not met. DNR is required to assess permit fees. Fees must be set at a level to cover permitting costs. Silvicultural burns are prohibited during periods of air impairment.

### Agricultural Burning

The state or local permitting authority must set fees, by rule, to cover administrative and development costs of researching alternative practices. Agricultural burning is prohibited during periods of air impairment. An advisory committee is established to identify best management practices and research and development needs. Persons implementing best management practices are eligible for reduced fees.

### **WOODSTOVES AND FIREPLACES:**

New woodstoves sold after January 1, 1995 must meet an emission standard of 4.5 grams per hour for non-catalytic stoves and 2.5 grams per hour for catalytic stoves. On January 1, 1992 the fee on new woodstove sales is increased from \$15 dollars to \$30 dollars. New woodstoves offered for sale must have a label comparing the level of emissions of the woodstove to emissions from gas and oil heating systems. An adequate source of heat, from other than woodstoves, is required of new and modified construction within urban growth areas. All new and used woodstoves installed in an urban growth area must be certified woodstoves. Fireplaces, except masonry fireplaces, must meet 1990 federal woodstove emission standards beginning in 1997. In rural areas, certain woodstoves with low emissions are exempt from burn bans.

### **GLOBAL WARMING AND OZONE DEPLETION:**

Persons repairing refrigeration systems, including automobile air conditioners, are required to collect and recycle chlorofluorocarbons (CFC's). The sale of certain CFC-containing products is prohibited, including kits for the home repair of vehicle air conditioning. Certain exemptions are provided. Ecology may not issue fines in areas where equipment to collect, recycle, or transport CFC's is not available.

### **MISCELLANEOUS SECTIONS:**

The state treasurer is directed to transfer funds from the air pollution control account to the clean water account whenever the clean water account falls below \$45 million.

Reasonable available control methods are required for sources or source categories contributing to the majority of state-wide emissions. The Department of Ecology is to adopt rules for all source categories by July 1, 1996.

### ***EFFECT OF SENATE AMENDMENT(S):***

### **Motor Vehicles and Fuels:**

The repair waiver of the inspection and maintenance program is increased from \$50 dollars to \$100 dollars for pre-1981 vehicles. A provision is added stating that if the EPA disapproves of the repair waiver, the repair waiver will be at least \$450 dollars, as per federal law.

Language is added clarifying that the act is not intended to allow UTC to subsidize CNG re-fueling stations through ratepayers not using such re-fueling stations.

Transportation projects must conform with the state air plan only if the project is in a non-attainment area.

All sections relating to transportation demand management planning are deleted.

The surcharge on motor vehicle registration fees are decreased to \$2.25 from \$4.25. The surcharge is reduced to \$2 in July, 1993. Funding for the clean water account is removed. Farm vehicles are exempted from the surcharge.

The Department of Ecology must recommend to the Legislature whether or not to adopt California vehicle emission standards.

### **Industrial and Commercial Sources:**

The LAER standard applies only to sources required by federal law to meet the standard; the bill passed by the House required LAER for all new and modified sources in non-attainment areas. The Department of Ecology must make recommendations as which sources should meet the LAER standard by December, 1992.

Language is added clarifying that the Legislature, not the Department of Ecology, will set the operating permit fees during the 1993 session.

Local air authorities must notify a source of a violation at least 30 days before taking enforcement action and offer the violator a chance to meet with the authority.

Actions of the Department of Ecology and local air authorities preempt other state and local government entities on actions relating to air pollution from hazardous material storage as regulated under the uniform building and fire codes. The Department of Ecology is to develop rules for excusable excess emissions.

### **Outdoor Burning:**



The Department of Ecology must set agricultural burning fees at the level recommended by the agricultural burning task force.

**Woodstoves:**

The 1995 emission standards for woodstoves are to be adjusted if the EPA develops a new way to measure emissions, such that the new standard is equivalent to the old standard. Factory built fireplaces must meet 1990 EPA woodstoves standards by January 1997. The Building Code Council shall adopt rules by January 1, 1997 establishing a methodology for testing factory-built fireplaces designed to achieve standard equivalence to the EPA standard. The state Building Code Council must adopt design standards for masonry fireplaces before January 1, 1997. The provision allowing very low polluting woodstoves to be exempt from burn bans in rural areas is deleted. Actions of the Department of Ecology and local air authorities preempt local governments in the areas of woodstove emission, opacity, and certification standards.

**Miscellaneous:**

The provision requiring the transfer of funds from the clean air account to the clean water account is deleted.

***Fiscal Note:*** Available.

***Effective Date:*** The bill contains an emergency clause and takes effect immediately except for sections 602 and 603 which take effect July 1, 1992; sections 234 through 240 and 242 which take effect October 1, 1991; and sections 202 through 209 which take effect on January 1, 1993.

***Testimony For:*** (Environmental Affairs): All major sources of pollution should be more stringently regulated. Programs to address air pollution should be adequately funded. The state will not meet federal air quality deadlines if the bill is less aggressive than the Federal Clean Air Act. With few exceptions, Congress intended that states should have the flexibility to tailor programs to meet individual state and local problems. Local governments should have authority to expand the boundaries of inspection and maintenance programs. Woodstove smoke causes severe problems in localized areas and should be regulated more stringently.

(Revenue): The bill addresses major air pollution issues and funds needed programs appropriately. Fees based on pollution encourages waste reduction as well. There is a proven relationship between pollution from motor vehicles

and water quality, and this bill provides funding for both. The bill provides incentives for fuel efficient cars. Accountability for industrial permit fees is needed. The annual motor vehicle fee of \$2.50 per car is reasonable. Transportation demand management is a good way to control pollution from cars.

**Testimony Against:** (Environmental Affairs): Technology requirements for industrial sources will be very expensive. The bill should not go beyond the federal law in the area of technology requirements under the operating permit program. Delegated local authorities should be allowed to collect fees from the sources they regulate. Emission requirements for new woodstoves should not be more stringent until federal testing methodologies improve.

(Revenue): Woodstove regulations were revised last session. Changing woodstove regulation at this time is a disincentive for people to buy new, cleaner stoves. The fee schedule for slash burn fees should be more reasonable, and fees should not be spent on research for alternatives to burning. An excise tax on new cars is counter-productive, since old cars are the problem. The gas guzzler tax preempts federal law and is not enforceable.

**Witnesses:** (Environmental Affairs) January 29, 1991: Marty Sangster, Washington Trucking Association (concerns); Mayor Doreen Marchione, City of Redmond and Eastside Transportation Program, (pro); Bruce Olsen, AAA (both); Larry Berdan, Washington Natural Gas (pro); Kelly Brown, Ford Motor Company - MVMA, (didn't say); Karen Vialle, Mayor of Tacoma (pro); Henry Sharpe, City of Seattle (didn't say); Chris Leman, Institute for Transportation and the Environment (didn't say); David Richardson, Seattle (pro with comments); Rick Wickman, Urban County Coalition - WSAC (pro); Scott Rutherford, University of Washington (pro); Mike Wasch, The Boeing Company (pro); and Dick Serdoz, S.W. Air Pollution Control Authority (didn't say).

(Environmental Affairs) January 31, 1991: Linda Tanz, Washington State Lung Association (pro); Rick Johnson, M.D., (pro); Al Haslebacher, Larry Gadya and Bob Emtman, Intermountain Grass Growers' Association (both); Stan Biles, Department of Natural Resources (pro); Rob Sandblom, M.D., Respiratory Diseases - Eastside Specialty Center (pro); Tim Lukens, Northwest Pellet Stove & Fuel Company (both); George Akers, Meridian Consolidated Ind. (both); Darlene Madenwald, Washington Environmental Council (pro); Rico Baroga, Tacoma Pierce County Health Department (pro); Kip Rumens, Washington Wood Energy (didn't say); Bruce Wishart, Sierra Club (pro); Donna Larson, Washington CAC and President of Citizens Against Woodstove Fumes (pro with amendments);

Thomas Stroud, Masonry Heater Association (didn't say); Jim Havens (WHEA); Sam Sullivan, Washington Wood Energy Association (didn't say); Craig Beals, WFPA (both); John Gorman, Simpson Timber Company (both); and Dick Serdoz, S.W. Air Pollution Control Authority (both).

(Environmental Affairs) February 1, 1991: Gary Smith, Independent Business Association (with concerns); Darlene Madenwald, Washington Environmental Council (pro); Bruce Wishart, Sierra Club (pro); Linda Tanz, Washington State Lung Association (pro); Kris Backes, Associated Washington Business (con); Ernie Wessman, Pacific Power & Light (con); Larry McLellan, Vanalco, Inc. (con); Dick Serdoz, S.W. Air Pollution Control Authority (both); Tom Hanson, WSDOT (pro); Bob Mickey, Autobody Craftsman Association (con); Bill Kidd, ARCO (didn't say); Dave Smukowsky, The Boeing Company (pro); and Lewellyn Mathews, Northwest Pulp & Paper Company (didn't say).

(Environmental Affairs) February 22, 1991: Don Bockelman, Citizens Alert (both); Robert D. Wienert, citizen from Graham, Washington (pro); Dick Serdoz, S.W. Air Pollution Control Authority (both); John Crouch, Wood Heating Alliance (yes); Bruce Wishart and Linda Tanz, Clean Air Coalition (pro); Kim Baydo, Recreational Vehicle Dealers Association (questions on bill); Llewellyn Matthews, Northwest Paper Products Association (questions on bill); Kris Backes, Associated Washington Business (questions on bill); Gordon Schmidt, USDA - Forest Service (pro); James Nolan, Puget Sound Air Pollution Control (didn't say); Gary Smith, Independent Business Association (concerns); Tim Boyd, Washington Forest Protection Association (concerns); Sam Sullivan, Washington Wood Energy Association (concerns); Jerry Whitfield, Pyro Industries and Associated Pellet Fuel Industries (concerns); Marty Sangster, Washington Trucking Association (concerns); Steve Blankenship, Ford Motor Company (pro with amendments); and Victoria Chiechi, Motor Vehicle Manufacturing Association (pro with amendments).

(Revenue) Steve Sheldon, Olympia Fireplace Supply (con); Llewellyn Matthews, Northwest Pulp & Paper Association; Nels Hanson, Washington Farm Forestry Association (con); Robert G. Johnston, METRO (con); Sam Sullivan, Washington Wood Energy Association (con); Gary Smith, Independent Business Association (concerns); Kris Backes, AWB (pro with amendments); Mary Murphy and Bruce Wishart, Clean Air Coalition (pro); Vicki Chiechi, Motor Vehicle Manufacture Association (amendment); Steve Blankenship, Ford Motor Company (amendment); Jim Boldt, Auto Dealers Association (amendment); Tim Boyd, Washington Forest Protection Association (amendment); Kathleen Collins, AWC (pro); and Ed Thorpe, Coalition for Clean Water (pro).

***VOTE ON FINAL PASSAGE:***

Yeas 65; Nays 31; Excused 2

Nays: Representatives Ballard, Basich, Betrozoff, Bowman, Brumsickle, Casada, Chandler, Edmondson, Fuhrman, Hargrove, Hochstatter, Johnson P, Kremen, Lisk, McLean, Mielke, Miller, Morris, Morton, Nealey, Neher, Padden, Prince, Rayburn, Schmidt, Tate, Vance, Van Luven, Wilson, Wynne, Zellinsky

Excused: Representatives Brekke, Silver