

**SENATE BILL REPORT**

**ESHB 1028**

**AS REPORTED BY COMMITTEE ON WAYS & MEANS, APRIL 8, 1991**

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

**SPONSORS:** 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).

**HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS**

**SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES**

**Majority Report:** Do pass as amended.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Conner, Owen, Patterson, and Snyder.

**Staff:** Gary Wilburn (786-7453); Atsushi Kiuchi (786-7708)

**Hearing Dates:** March 26, 1991; April 4, 1991

**SENATE COMMITTEE ON WAYS & MEANS**

**Majority Report:** Do pass as amended.

Signed by Senators McDonald, Chairman; Bluechel, Gaspard, Hayner, L. Kreidler, Metcalf, Murray, Niemi, Owen, Rinehart, Talmadge, and Wojahn.

**Staff:** Michael Groesch (786-7715)

**Hearing Dates:** April 8, 1991

**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 nonattainment 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 "nonattainment" areas (i.e. 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 unhealthful 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:**

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 nonattainment areas must disclose certain information to car buyers relating to the vehicle emission tests.

Alternative Fuels. 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 a clean fuel vehicle. Beginning in 1992, the Department of Ecology (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 nonattainment 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 nonattainment areas and the BACT standard in attainment areas; existing sources are required to meet the BART emission standard. The LAER requirement applies only to those pollutants causing the area to be in nonattainment.

Existing sources must meet the RACT emission standard in attainment and nonattainment 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 its 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 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 for: 1) areas that exceed federal air quality standards for pollutants emitted by outdoor burning; 2) urban growth areas as defined; 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 to \$30. 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 (CFCs). 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.

**Appropriation:** none

**Revenue:** none

**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.

**SUMMARY OF PROPOSED SENATE ENVIRONMENT & NATURAL RESOURCES AMENDMENTS:**

GOALS AND PUBLIC POLICY:

The Department of Ecology and local air pollution control authorities preempt actions of other state agencies and local governments to control air pollution, except as provided in this act. Air contaminants emitted in compliance with state pesticide application laws are not air pollution for purposes of this act.

MOTOR VEHICLES AND FUELS:

Inspection and Maintenance (I&M) Program. The "repair waiver" dollar level is increased from \$50 to \$100 for 1980 and earlier models, with a proviso that the waiver increases to \$450 for all models if necessary to obtain federal approval of the program. The inspection disclaimer by auto dealers is limited to the sale of used vehicles not under warranty, and to counties in which an I&M program exists. The diesel vehicle smoke opacity testing shall be implemented by rules ensuring an objective and repeatable test, and that engines meeting federal emission standards would pass the state test.

Engine manufacturers shall warrant that new engines conform with federal exhaust emission standards.

Alternative Fuels. The State Energy Office is the lead to study natural gas conversions of school buses, and the Superintendent of Public Instruction and the State Ecology Department are removed from the study. "Clean fuel" grants may be made for procurement of publicly-owned school buses. Grants may also be made to the State Energy Office for clean fuel refueling infrastructure. Variances may be granted from motor fuel specifications if necessary to produce lower emission motor fuels.

Commute Trip Reduction Plans. Commute trip reduction plans are required for employers of 100 or more employees. An appeals process is to be included under local trip reduction plans to allow waivers for employers based upon the special characteristics of their business. The goals shall take into account and provide credit for existing reduction accomplishments. The deadline for achieving specified percentage reductions is extended one year. Programs may be required of other than major employers at major work sites if the regional air authority determines it is necessary to comply with carbon monoxide and ozone ambient air standards.

The deadlines for planning, submission and implementation of plans are extended. The failure to reach goals is not subject to penalties if the failure is due to lack of collective bargaining agreement. Short term construction site projects of less than two years are exempt from the planning requirements.

Motor Vehicle Registration Fee. The \$4.25 excise tax is reduced to \$2, and commercial trailers and farm vehicles are exempt from the tax. The tax is not imposed at the time of dealer licensing of travel trailers and campers. Revenues from the tax are deposited to a clean air account in the transportation fund, and may be expended for transportation demand management programs, transportation control programs required by state and federal law, and state and local air quality programs related to transportation sources of air pollution.

Emissions Standards. Legislative approval is required before the Ecology Department may adopt the California vehicle emission standards.

#### INDUSTRIAL AND COMMERCIAL SOURCES:

Best available control technology (BACT) is required for new sources, and requirement of "lowest achievable emissions reductions" (LAER) is limited to new sources where required by the federal Clean Air Act. Definitions of "new source" and "modification" are provided and are to be consistent with the federal act. To require an operating permit for a source where not required under the federal act, the source must be emitting a significant portion of the substances for which the area is in nonattainment and, with respect to common small businesses, the Ecology Department must establish by clear and convincing evidence that a permit is essential to meet ambient air standards.

Gasoline vapor control requirements may not be adopted except as required by specific sections of the federal Clean Air Act.

The method for calculating penalties on a per day basis is modified. The enforcing agency shall provide a notice of violation allowing 30 days before commencing a formal enforcement action, and shall afford an opportunity for a meeting prior to the enforcement action.

The terminology in the provisions for notice of construction procedures are modified to be consistent with definitions used in the act. New source review of a modification is limited to the contaminants which would increase as a result of the modification. Procedures and deadlines for processing notice of construction applications and alterations in emission control technology are specified. Reasonably available control technology (RACT) and operation and maintenance measures may be required for control technology alterations.

A defense to emission violations is provided for an upset, malfunction or act of God, where the operator took all reasonable measures to prevent the exceedance and to minimize its duration and severity.



#### OUTDOOR BURNING:

The fee for a permit to burn agricultural residues is \$1, in addition to the existing \$1 fee for research purposes. The ceiling upon statewide emissions from slash burning through 1994 is deleted. Federal forest lands and emissions from such lands are to be included in the base for determining statewide reductions, regardless of federal participation in the reduction plan. The slash burn emission reduction plan is to be based upon the existing smoke management agreement. Recommendations from the Forest Fire Advisory Board must be obtained in establishing the permit fee for slash burning.

#### WOODSTOVES AND FIREPLACES:

Fireplaces. The \$30 fee upon the sale of new woodstoves is extended to include masonry fireplaces. Factory-built fireplaces are added to masonry fireplaces for purposes of the exemption from standards in 1997. A Fireplace Advisory Committee is created to recommend fireplace emission standards and public education programs, and to report to the Legislature by 1994. The standards applicable to fireplaces in 1997 may be federal standards or equivalent standards established by the Legislature based upon the report.

Woodstoves. If the U.S. Environmental Protection Agency adopts emission standards after January 1, 1991, then the State Ecology Department shall adopt emission limits equivalent to the 1995 limits provided in the act, using the same testing methodology as that used by the federal agency. The limits shall not exceed the federal limits. For purposes of determining what are "equivalent" limits, the department shall develop a statistically reliable conversion factor comparing the testing methodologies established before and after January 1, 1991.

The rural area burn ban exemption in the engrossed bill is expanded from certain stoves meeting stringent emission standards to include all certified wood stoves and those exempt from certification. The Building Code Council regulations requiring an adequate source of heat other than woodstoves in new construction is expanded to apply to areas in nonattainment for particulates, as well as to urban growth areas.

#### GLOBAL WARMING AND OZONE DEPLETION:

Prohibition upon sale of consumer cleaning sprays for electronic or photographic equipment that contain ozone-depleting chemicals is limited to nonessential products.

#### LOCAL AIR POLLUTION CONTROL AUTHORITIES:

Administrative procedures for rulemaking by local air authorities are specified. Any first class county bounded 75 percent or more by water which is a member of a multi-county air authority shall operate as a single county authority

unless by January 1, 1992 the county legislative authority decides to continue as a member or join another authority.

**MISCELLANEOUS:**

The Department of Ecology shall not issue wastewater discharge permits containing effluent limits for chlorinated organic compounds by pulp and paper mills until final federal effluent guidelines are issued, and then the state permit limits must be consistent with the national guidelines. Dioxin compounds are not included within this provision.

The provision in the engrossed bill directing that funds be transferred from the air pollution control account to the water quality account sufficient to meet the statutory annual level in the latter account is deleted.

**SUMMARY OF PROPOSED SENATE WAYS & MEANS AMENDMENTS:**

**MOTOR VEHICLES AND FUELS:**

Motor Vehicle Registration Fee. The clean air account is removed from the bill. Revenue from the \$2.25 excise tax is deposited into the air pollution control account.

**OUTDOOR BURNING:**

The fee for a permit to burn agricultural residues will be established by rules adopted by the Department of Ecology. Fees will be set at the level to be determined by the agricultural task force, but the fees shall not exceed \$2.50 per acre. After fees are established by rule, fee increases are limited to the annual rate of inflation.

Woodstoves. The bill is clarified to state that revenue from fees on woodstoves and fireplaces shall be deposited in the woodstove education account, not in the air pollution control account.

**TESTIMONY FOR:**

Comprehensive measures addressing all sources of air pollution are required in order to prevent air quality deterioration and to meet federal air quality standards and deadlines.

**TESTIMONY AGAINST:**

The measure imposes unfair and costly restrictions upon activities and businesses, and state measures should not be modified until further guidance as to prospective federal requirements is obtained.

**TESTIFIED (Environment & Natural Resources):** Rep. Pruitt (pro); Mayor Karen Vialle, Tacoma (pro); Stu Clark, Department of Ecology; Mayor Doreen Marchione, Redmond (pro); Dick Watson, State Energy Office (pro); Kris Backes, AWB (pro); Mike Wasch, Boeing (pro); Don Marcy, National Association of Office and Business Parks (pro); Tim King, CH2M Hill (pro); Bruce Oleson,

AAA (pro); Rick Wickman, Association of Washington Counties (pro); Joel Birchman, City of Mountlake Terrace (pro); Richard Hayes, Kitsap Transit (pro); Larry Berdan, Washington Natural Gas (pro); Don Monroe, Pierce Transit (pro); Chris Leman, Clean Air Coalition (pro); Linda Tanz, Lung Association (pro); Bruce Wishart, Sierra Club (pro); Marty Sangster, Washington Trucking Association; Ed Thorpe, Clean Water Coalition (pro); Gary Smith, Independent Business Association; Charles Howard, Department of Transportation (pro); Ed Larsen, Snohomish county (pro); Ian McGowan, American Electronics Association (pro); Jeff Parsons, Audubon Society (pro); Larry Stevens, Automotive Wholesalers (pro); Kathleen Collins, Association of Cities (pro); Jim Boldt, Washington Auto Dealers (pro); Vicki Chiechi, Vehicle Manufacturers Association; Tim Lukens, Northwest Pellet Stoves and Fuel Co. (pro); Dave Gramlow, Pleasant Prairie Farms (pro); Lynn Billington, British Petroleum (pro); David Smulkowski, Boeing (pro); Lis Gildemeister, Bill Bellman, Art Dammkoehler, Washington Oil Marketers Assn.; Al Haslebacher, Intermountain Grass Growers (pro); Mike Matson, Wood Heating Alliance; George Gockill, Fireplace Distributors; Jerry Whitfield, Pryo Industries; Jerry Ficklin, Pierce County Air Coalition (pro); Tim Hamilton, Auto Traders Assn.; Donna Larson, CAWF (pro); Ann Robinson, League of Women Voters (pro); Tim Boyd, Washington Forest Protection Assn.; Nels Hanson, Washington Farm Forestry Assn.; Stan Biles, Department of Natural Resources (pro); Steve Sheldon, Olympia Fireplace Co.

**TESTIFIED (Ways & Means:** PRO: Kris Backes, Assn. of WA Business; Jeff Parsons, National Audubon Society; Steve Hunter, Ecology; Linda Tanz, American Lung Assn. of WA; Bruce Wishart, Sierra Club; Dick Watson, WSEO