

SENATE BILL REPORT

ESHB 1034

As Reported By Senate Committee On:
Environment, Energy & Water, March 30, 2001

Title: An act relating to outdoor burning.

Brief Description: Changing outdoor burning provisions.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Pennington, Mielke and Schindler).

Brief History:

Committee Activity: Environment, Energy & Water: 3/20/01, 3/30/01 [DPA, DNP].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Jacobsen and Morton.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Staff: Richard Rodger (786-7461)

Background: The Federal Clean Air Act was enacted in 1970 to create a nationwide framework for controlling air pollution. Congress amended the act in 1990 to improve the air quality in metropolitan areas that violated health-based standards. The act sets acceptable standard levels for various air pollutants including ozone, carbon monoxide, and toxins. If the presence of a pollutant exceeds the acceptable level in a metropolitan area, the United States Environmental Protection Agency (US EPA) designates that area a nonattainment area. Nonattainment areas are subject to federal, state, and local regulations aimed at reducing the amount of the pollutant in the air.

Outdoor burning— means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. In 1991, outdoor burning was banned in any federally designated nonattainment or maintenance area. Outdoor burning is also prohibited in any urban growth area, except until December 31, 2006, in cities located within an urban growth area with a population fewer than 5,000 that are not within or contiguous to an actual or threatened nonattainment area.

Outdoor burning is allowed for flood and storm debris burning and in cities not within an urban growth area.

Summary of Amended Bill: Local air authorities may, by rule, exempt urban growth areas within their jurisdiction from the prohibition against outdoor burning if the urban growth area

is not: (1) in an area where the ambient air quality standards exceed federal or state levels for the pollutants emitted by outdoor burning; (2) within the boundaries of an incorporated city or town; or (3) in a portion of the urban growth area with a general population density of over 1,000 people per square mile.

A city or county may, by ordinance, exempt an urban growth area within its borders from the burning prohibition, after consultation with the DOE, if it is not served by an active local air authority. The county may only relax the prohibition on outdoor burning in urban growth areas: in an area where the ambient air quality standards do not exceed federal or state levels for the pollutants emitted by outdoor burning; outside the boundaries of an incorporated city or town; and outside of portions of the urban growth area with a general population density of over 1,000 people per square mile.

The population density provision is measured by census tract and must be redetermined every five years.

Fire hazard abatement is allowed in urban growth areas if a permit is issued by a fire protection agency, county or conservation district if (1) there is not an impaired air declaration or an air pollution episode, (2) there are no reasonable alternatives to burning, and (3) the regional deputy fire marshal has verified the fire hazard.

Silvacultural burning is allowed under the current Department of Natural Resources permit process, subject to the limitations regarding urban growth areas.

Amended Bill Compared to Original Bill: Local air authorities, cities, and counties must adopt rules or ordinances to expand burning within their urban growth areas. Cities are granted the same authority as counties. Outdoor burning is authorized, under certain circumstances, in areas contiguous to nonattainment or maintenance areas. It is clarified that burning is not allowed within the boundaries of incorporated cities or towns. The population density requirement is measured by census tract and reviewed every five years. Qualified fire hazard abatement burning and silvacultural burning provisions are added as exemptions to the open burning statute. The provisions concerning outdoor burning containers are removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Final authority for deciding outdoor burning issues should be at the local level, where the state can be free to offer input. Many incorporated cities have incorporated areas and areas within their urban growth area that are rural in character and should be allowed to conduct outdoor burning. Many citizens must travel great distances to dispose of material that they once were able to burn. Driving a vehicle these distances is worse for the air quality than outdoor burning. Local authorities should be able to determine what type of burning containers are authorized for use within their jurisdiction.

Testimony Against: Outdoor burning in urban areas is especially critical since people do not want to inhale their neighbors' pollution. Health problems associated with unclean air can

arise at pollutant levels well below federal standards. The Federal Clean Air Act delegates authority over air quality to the state, which then delegates portions of that authority to the local air authorities. There is no provision for delegating that responsibility to a county, so if a county allows burning, the state must find other methods for improving overall air quality. We should not grant counties the authority over just one aspect of air quality without consideration of the other elements contributing to harmful emissions. The existing laws and prohibitions have just recently taken effect, and the state should wait to see the results before changing the law. The statute should not prohibit burning in former nonattainment areas. The agencies regulating burning should not be granted additional authority to restrict burning. Some air agencies don't want the authority to define what containers may be used for burning. The bill does not specify how the population density will be determined.

Testified: Representative Pennington, prime sponsor; Robert Elliott, Southwest Clean Air Agency (pro); Maxine Keesling (con); Mike Ryherd, Puget Sound Clean Air Agency (concerns).