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**SUBSTITUTE HOUSE BILL 3002**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Cooper, Lovick, Romero and Chase; by request of Washington State Patrol)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to regulation of outdoor burning; amending RCW  
2 70.94.743, 70.94.745, 70.94.750, and 70.94.775; adding a new section to  
3 chapter 48.48 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.48 RCW  
6 to read as follows:

7 (1)(a) Whenever the state fire marshal finds that conditions of  
8 extreme fire hazard exist and that state resources or the protection of  
9 life or property may be in danger, the fire marshal may recommend to  
10 the governor that the governor prohibit all outdoor burning on state or  
11 local public and private land throughout the state or within specific  
12 portions of the state.

13 (b) In determining whether conditions of extreme fire danger exist,  
14 the state fire marshal shall rely on the energy release component, or  
15 other component, of the national weather service's national fire danger  
16 rating system.

17 (2) Prior to making such a recommendation the state fire marshal  
18 must first consult with and achieve concurrence from:

19 (a) The commissioner of public lands;

- 1 (b) The director of the department of ecology;
- 2 (c) The director of the department of agriculture; and
- 3 (d) The director of state parks.

4 (3) Upon receiving such a recommendation from the state fire  
5 marshal, if the governor finds that state resources or the protection  
6 of life or property are in danger then the governor may issue an  
7 executive order forbidding all outdoor burning throughout the state or  
8 within specific portions of the state. The order shall be in effect  
9 until rescinded by the governor. The order may allow for specific  
10 exceptions to be made where the governor determines that certain  
11 outdoor burning will not unduly endanger state resources nor the  
12 protection of life or property, and subject to limitations and  
13 conditions as recommended by the state fire marshal.

14 (4) It shall be unlawful for any person to conduct or cause to be  
15 conducted any outdoor burning at any time and place as is forbidden by  
16 an executive order issued pursuant to subsection (3) of this section.

17 (a) Intentional violation of this section is a crime and shall be  
18 punished as a gross misdemeanor.

19 (b) Negligent violation of this section is a class 1 civil  
20 infraction pursuant to chapter 7.80 RCW.

21 (5) In addition to the penalty provided in subsection (4) of this  
22 section, any injured party may bring a civil cause of action for  
23 violation of an executive order issued pursuant to subsection (3) of  
24 this section. A person may be liable under such an action for actual  
25 damages and reasonable attorneys' fees, court costs, and investigative  
26 costs incurred in bringing the action.

27 (6) For the purposes of this section, "outdoor burning" means the  
28 combustion of material of any type in an open fire or in an outdoor  
29 container without providing for the control of combustion or the  
30 control of fire-causing emissions from the combustion.

31 (7) The state fire marshal may adopt rules necessary to implement  
32 this section.

33 (8) The provisions of this section shall be enforced by any general  
34 or limited authority Washington peace officer as those terms are  
35 defined in RCW 10.93.020 or may be enforced by any district, city,  
36 county, and/or state fire authority.

1       **Sec. 2.** RCW 70.94.743 and 2001 1st sp.s. c 12 s 1 are each amended  
2 to read as follows:

3       (1) Consistent with the policy of the state to reduce outdoor  
4 burning to the greatest extent practical:

5       (a) Outdoor burning shall not be allowed in any area of the state  
6 where federal or state ambient air quality standards are exceeded for  
7 pollutants emitted by outdoor burning.

8       (b) Outdoor burning shall not be allowed in any urban growth area  
9 as defined by RCW 36.70A.030, or any city of the state having a  
10 population greater than ten thousand people if such cities are  
11 threatened to exceed state or federal air quality standards, and  
12 alternative disposal practices consistent with good solid waste  
13 management are reasonably available or practices eliminating production  
14 of organic refuse are reasonably available. In no event shall such  
15 burning be allowed after December 31, 2000, except that within the  
16 urban growth areas for cities having a population of less than five  
17 thousand people, that are neither within nor contiguous with any  
18 nonattainment or maintenance area designated under the federal clean  
19 air act, in no event shall such burning be allowed after December 31,  
20 2006.

21       (c) Notwithstanding any other provision of this section, outdoor  
22 burning may be allowed for the exclusive purpose of managing storm or  
23 flood-related debris. The decision to allow burning shall be made by  
24 the entity with permitting jurisdiction as determined under RCW  
25 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject  
26 to (a) or (b) of this subsection, a permit shall be required, and a fee  
27 may be collected to cover the expenses of administering and enforcing  
28 the permit. All conditions and restrictions pursuant to RCW  
29 70.94.750(1) (~~and~~), 70.94.775, and section 1 of this act apply to  
30 outdoor burning allowed under this section.

31       (d) Outdoor burning that is normal, necessary, and customary to  
32 ongoing agricultural activities, that is consistent with agricultural  
33 burning authorized under RCW 70.94.650 and 70.94.656, is allowed within  
34 the urban growth area as defined in (b) of this subsection if the  
35 burning is not conducted during air quality episodes or conducted  
36 contrary to an executive order issued by the governor under section 1  
37 of this act, or where a determination of impaired air quality has been

1 made as provided in RCW 70.94.473, and the agricultural activities  
2 preceded the designation as an urban growth area.

3 (2) "Outdoor burning" means the combustion of material of any type  
4 in an open fire or in an outdoor container without providing for the  
5 control of combustion or the control of emissions from the combustion.

6 (3) This section shall not apply to silvicultural burning used to  
7 improve or maintain fire dependent ecosystems for rare plants or  
8 animals within state, federal, and private natural area preserves,  
9 natural resource conservation areas, parks, and other wildlife areas.

10 **Sec. 3.** RCW 70.94.745 and 1995 c 206 s 1 are each amended to read  
11 as follows:

12 (1) It shall be the responsibility and duty of the department of  
13 natural resources, department of ecology, department of agriculture,  
14 fire districts, and local air pollution control authorities to  
15 establish, through regulations, ordinances, or policy, a limited  
16 burning permit program.

17 (2) The permit program shall apply to residential and land clearing  
18 burning in the following areas:

19 (a) In the nonurban areas of any county with an unincorporated  
20 population of greater than fifty thousand; and

21 (b) In any city and urban growth area that is not otherwise  
22 prohibited from burning pursuant to RCW 70.94.743.

23 (3) The permit program shall apply only to land clearing burning in  
24 the nonurban areas of any county with an unincorporated population of  
25 less than fifty thousand.

26 (4) The permit program may be limited to a general permit by rule,  
27 or by verbal, written, or electronic approval by the permitting entity.

28 (5) Notwithstanding any other provision of this section, neither a  
29 permit nor the payment of a fee shall be required for outdoor burning  
30 for the purpose of disposal of tumbleweeds blown by wind. Such burning  
31 shall not be conducted during an air pollution episode or any stage of  
32 impaired air quality declared under RCW (~~70.94.714~~) 70.94.715, or  
33 conducted contrary to an executive order issued by the governor under  
34 section 1 of this act. This subsection (5) shall only apply within  
35 counties with a population less than two hundred fifty thousand.

36 (6) Burning shall be prohibited in an area when an alternate  
37 technology or method of disposing of the organic refuse is available,

1 reasonably economical, and less harmful to the environment. It is the  
2 policy of this state to foster and encourage development of alternate  
3 methods or technology for disposing of or reducing the amount of  
4 organic refuse.

5 (7) Incidental agricultural burning must be allowed without  
6 applying for any permit and without the payment of any fee if:

7 (a) The burning is incidental to commercial agricultural  
8 activities;

9 (b) The operator notifies the local fire department within the area  
10 where the burning is to be conducted;

11 (c) The burning does not occur during an air pollution episode or  
12 any stage of impaired air quality declared under RCW 70.94.715; (~~and~~)

13 (d) The burning does not occur contrary to an executive order  
14 issued by the governor under section 1 of this act; and

15 (e) Only the following items are burned:

16 (i) Orchard prunings;

17 (ii) Organic debris along fence lines or irrigation or drainage  
18 ditches; or

19 (iii) Organic debris blown by wind.

20 (8) As used in this section, "nonurban areas" are unincorporated  
21 areas within a county that is not designated as an urban growth area  
22 under chapter 36.70A RCW.

23 (9) Nothing in this section shall require fire districts to enforce  
24 air quality requirements related to outdoor burning, unless the fire  
25 district enters into an agreement with the department of ecology,  
26 department of natural resources, a local air pollution control  
27 authority, or other appropriate entity to provide such enforcement.

28 **Sec. 4.** RCW 70.94.750 and 1991 c 199 s 412 are each amended to  
29 read as follows:

30 The following outdoor fires described in this section may be burned  
31 subject to the provisions of this chapter and also subject to city  
32 ordinances, county resolutions, gubernatorial executive orders under  
33 section 1 of this act, rules of fire districts and laws, and rules  
34 enforced by the department of natural resources if a permit has been  
35 issued by a fire protection agency, county, or conservation district:

36 (1) Fires consisting of leaves, clippings, prunings and other yard

1 and gardening refuse originating on lands immediately adjacent and in  
2 close proximity to a human dwelling and burned on such lands by the  
3 property owner or his or her designee.

4 (2) Fires consisting of residue of a natural character such as  
5 trees, stumps, shrubbery or other natural vegetation arising from land  
6 clearing projects or agricultural pursuits for pest or disease control;  
7 provided the fires described in this subsection may be prohibited in  
8 those areas having a general population density of one thousand or more  
9 persons per square mile.

10 **Sec. 5.** RCW 70.94.775 and 1995 c 362 s 2 are each amended to read  
11 as follows:

12 Except as provided in RCW 70.94.650(5), no person shall cause or  
13 allow any outdoor fire:

14 (1) Containing garbage, dead animals, asphalt, petroleum products,  
15 paints, rubber products, plastics, or any substance other than natural  
16 vegetation that normally emits dense smoke or obnoxious odors.  
17 Agricultural heating devices that otherwise meet the requirements of  
18 this chapter shall not be considered outdoor fires under this section;

19 (2) During a forecast, alert, warning or emergency condition as  
20 defined in RCW 70.94.715 or impaired air quality condition as defined  
21 in RCW 70.94.473, or during the time frame of an executive order issued  
22 by the governor under section 1 of this act.

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