

SHB 2326 - S AMD 198
By Senator Hargrove

ADOPTED AS AMENDED 03/02/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.94.473 and 2008 c 40 s 1 are each amended to read
4 as follows:

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

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

10 (b) Not burn wood in any solid fuel burning device except those
11 which are either Oregon department of environmental quality phase II or
12 United States environmental protection agency certified or certified by
13 the department under RCW 70.94.457(1) or a pellet stove either
14 certified or issued an exemption by the United States environmental
15 protection agency in accordance with Title 40, Part 60 of the code of
16 federal regulations, in the geographical area and for the period of
17 time that a first stage of impaired air quality has been determined, by
18 the department or any authority, for that area.

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

25 (ii) A first stage burn ban for impaired air quality may be called
26 for a county containing fine particulate nonattainment areas or areas
27 at risk for fine particulate nonattainment, and when feasible only for
28 the necessary portions of the county, when forecasted meteorological
29 conditions are predicted to cause fine particulate levels to reach or

1 exceed thirty micrograms per cubic meter, measured on a twenty-four
2 hour average, within seventy-two hours; and

3 (c)(i) Not burn wood in any solid fuel burning device in a
4 geographical area and for the period of time that a second stage of
5 impaired air quality has been determined by the department or any
6 authority, for that area. A second stage of impaired air quality is
7 reached when a first stage of impaired air quality has been in force
8 and has not been sufficient to reduce the increasing fine particulate
9 pollution trend, fine particulates are at an ambient level of twenty-
10 five micrograms per cubic meter measured on a twenty-four hour average,
11 and forecasted meteorological conditions are not expected to allow
12 levels of fine particulates to decline below twenty-five micrograms per
13 cubic meter for a period of twenty-four hours or more from the time
14 that the fine particulates are measured at the trigger level.

15 (ii) A second stage burn ban may be called without calling a first
16 stage burn ban only when all of the following occur and shall require
17 the department or the local air pollution control authority calling a
18 second stage burn ban under this subsection to comply with the
19 requirements of subsection ~~((+4))~~ (3) of this section:

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

22 (B) Meteorological conditions have caused fine particulate levels
23 to rise rapidly;

24 (C) Meteorological conditions are predicted to cause fine
25 particulate levels to exceed the thirty-five micrograms per cubic
26 meter, measured on a twenty-four hour average, within twenty-four
27 hours; and

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

30 (iii) In fine particulate nonattainment areas or areas at risk for
31 fine particulate nonattainment, a second stage burn ban may be called
32 for the county containing the nonattainment area or areas at risk for
33 nonattainment, and when feasible only for the necessary portions of the
34 county, without calling a first stage burn ban only when (c)(ii)(A),
35 (B), and (D) of this subsection have been met and meteorological
36 conditions are predicted to cause fine particulate levels to reach or
37 exceed thirty micrograms per cubic meter, measured on a twenty-four
38 hour average, within twenty-four hours.

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

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

10 (a) The meteorological conditions that resulted in their calling
11 the second stage burn ban;

12 (b) Whether the agency could have taken actions to avoid calling a
13 second stage burn ban without calling a first stage burn ban; and

14 (c) Any changes the department or authority is making to its
15 procedures of calling first stage and second stage burn bans to avoid
16 calling a second stage burn ban without first calling a first stage
17 burn ban.

18 After consulting with affected parties, the department shall
19 prescribe the format of such a report and may also require additional
20 information be included in the report. All reports shall be sent to
21 the department and the department shall keep the reports on file for
22 not less than five years and available for public inspection and
23 copying in accordance with RCW 42.56.090.

24 ~~(4) ((The department and local air pollution control authorities~~
25 ~~shall evaluate the effectiveness of the burn ban programs contained in~~
26 ~~this section in avoiding fine particulate levels to exceed thirty-five~~
27 ~~micrograms per cubic meter, measured on a twenty-four hour average, and~~
28 ~~provide a joint report of the results to the legislature by September~~
29 ~~1, 2011.)) For the purposes of this act, an area at risk for~~
30 ~~nonattainment means an area where the three-year average of the annual~~
31 ~~ninety-eighth percentile of twenty-four hour fine particulate values is~~
32 ~~greater than twenty-nine micrograms per cubic meter, based on the years~~
33 ~~2008 through 2010 monitoring data.~~

34 **Sec. 2.** RCW 70.94.477 and 2009 c 282 s 1 are each amended to read
35 as follows:

36 (1) Unless allowed by rule under chapter 34.05 RCW, a person shall

1 not cause or allow any of the following materials to be burned in any
2 residential solid fuel burning device:

- 3 (a) Garbage;
- 4 (b) Treated wood;
- 5 (c) Plastics;
- 6 (d) Rubber products;
- 7 (e) Animals;
- 8 (f) Asphaltic products;
- 9 (g) Waste petroleum products;
- 10 (h) Paints; or

11 (i) Any substance, other than properly seasoned fuel wood, which
12 normally emits dense smoke or obnoxious odors.

13 (2) To achieve and maintain attainment in areas of nonattainment
14 for fine particulates in accordance with section 172 of the federal
15 clean air act, a local air pollution control authority or the
16 department may, after meeting requirements in subsection (3) of this
17 section, prohibit the use of solid fuel burning devices, except:

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

21 (b) Woodstoves meeting the standards set forth in RCW
22 70.94.473(1)(b); or

23 (c) Pellet stoves.

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

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

30 (b) Make written findings that:

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

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

37 (iii) The area has an adequately funded program to assist low-

1 income households to secure an adequate source of heat, which may
2 include woodstoves meeting the requirements of RCW 70.94.453(2).

3 (4) If and only if the nonattainment area is within the
4 jurisdiction of the department and the legislative authority of a city
5 or county within the area of nonattainment formally expresses concerns
6 with the department's written findings, then the department must
7 publish on the department's web site the reasons for prohibiting the
8 use of solid fuel burning devices under subsection (2) of this section
9 that includes a response to the concerns expressed by the city or
10 county legislative authority.

11 (5) When a local air pollution control authority or the department
12 prohibits the use of solid fuel burning devices as authorized by this
13 section, the cities, counties, and jurisdictional health departments
14 serving the area shall cooperate with the department or local air
15 pollution control authority as the department or the local air
16 pollution control authority implements the prohibition. (~~However,~~
17 ~~cooperation shall not include enforcement of this prohibition.~~) The
18 responsibility for actual enforcement of the prohibition shall reside
19 solely with the department or the local air pollution control
20 authority. A city, county, or jurisdictional health department serving
21 a fine particulate nonattainment area may agree to assist with
22 enforcement activities.

23 (6) A prohibition issued by a local air pollution control authority
24 or the department under this section shall not apply to a person in a
25 residence or commercial establishment that does not have an adequate
26 source of heat without burning wood.

27 (7) As used in this section((~~7~~)):

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

30 (b) "Prohibit the use" or "prohibition" may include requiring
31 disclosure, removal, rendering inoperable, providing evidence of
32 destruction, or other similar requirements as may be approved by rule
33 by a local air pollution control authority or the department for areas
34 designated in nonattainment for fine particulates. However, except as
35 provided in RCW 64.06.020 relating to the seller disclosure of wood
36 burning appliances, any such prohibition may not include imposing
37 separate time of sale obligations on the seller or buyer of real estate
38 as part of a real estate transaction.

