

HOUSE BILL REPORT

HB 2785

As Reported by House Committee On:
Environment

Title: An act relating to ensuring that restrictions on the use of solid fuel burning devices do not prohibit the installation or replacement of solid fuel burning devices or the use of these devices during temporary outages of other sources of heat.

Brief Description: Ensuring that restrictions on the use of solid fuel burning devices do not prohibit the installation or replacement of solid fuel burning devices or the use of these devices during temporary outages of other sources of heat.

Sponsors: Representatives Shea, Short, Schmick, Taylor, Scott and McCaslin.

Brief History:

Committee Activity:

Environment: 1/25/16, 1/28/16 [DPS].

Brief Summary of Substitute Bill

- Limits the authority of the Department of Ecology (ECY) or local air authorities to restrict the installation or use of certain woodstoves during emergency power outages, regardless of whether a burn ban has been temporarily established.
- Limits the authority for the ECY or a local air authority to restrict uncertified woodstove use in areas not meeting federal air quality standards to only cover areas located in Western Washington.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dye, Farrell, Goodman, McBride, Pike and Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative Fey.

Staff: Jacob Lipson (786-7196).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Clean Air Emissions Standards.

The United States Environmental Protection Agency (EPA) may designate an area of nonattainment if there is a pattern of failure to reach and maintain ambient air quality standards over a period of time. When an area is designated as a nonattainment area, the state in which the area is located must submit an implementation plan (SIP) to reach attainment. This designation can cause additional requirements for all sources emitting fine particulate matter, including industrial and household sources.

Woodstoves and Other Solid Fuel Burning Devices.

Washington's Clean Air Act regulates uses of wood stoves and fireplaces, both of which are captured under the term "solid fuel burning device." A solid fuel burning device is defined as any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a woodstoves or fireplaces.

Since 1995 state law has restricted the sale of certain types of solid fuel burning devices that are not certified by the state or the EPA as meeting fine particulate matter emissions criteria. In addition, the state building code does not allow the inclusion of uncertified woodstoves and fireplaces in new construction. The emissions criteria that are currently required of solid fuel burning devices are specific to different technologies. For example, a fine particulate matter emissions standard of 2.5 grams per hour applies to catalytic woodstoves, while a limit of 4.5 grams per hour applies to pellet stoves.

Burn Bans.

In Washington, the ECY or the local air pollution control authority may impose a burn ban when it forecasts that fine particulate pollution levels in an area will exceed the federal 24-hour standard of 35 micrograms per cubic meter, or a standard of 30 micrograms per cubic meter in areas at risk for federal nonattainment designations.

Burn bans are tiered, so the ECY or the local air pollution control authority will typically first call a Stage One burn ban. If the first stage of impaired air quality has been in force and has not achieved sufficient reductions, and a forecast is made that fine particulate pollution levels will exceed the federal 24-hour standard of 25 micrograms per cubic meter, a Stage Two burn ban may be called. Under certain circumstances, ECY or the local air pollution control authority may call a Stage Two burn ban without first calling a Stage One burn ban.

The use of uncertified woodstoves and fireplaces is restricted during a Stage One burn ban, and any burning of wood in a solid fuel burning device or fireplace is restricted during a Stage Two burn ban.

Pierce County Non-Attainment Area.

In 2009 a portion of Pierce County was designated by the EPA as being in nonattainment with federal air quality standards as a result of the levels of fine particulate matter in the air. After the designation of the Pierce County nonattainment area, in 2012 the Legislature passed a law that allows the ECY or a local air authority to prohibit the use of uncertified woodstoves in a portion of the state that is in nonattainment with federal air quality standards for fine particulate matter.

In order for the ECY or a local air authority to restrict the use of a woodstove under the 2012 law, the ECY or local air authority must issue a written finding that emissions from woodstoves are a major contributing factor to the area's violations of federal air quality standards for fine particulate matter, and that the area has an adequately-funded heating source replacement program for low-income households.

In 2014 the ECY submitted a SIP to the EPA to correct air quality deficiencies in the Pierce County nonattainment area. The SIP relied, in part, on the authority granted by the Legislature in 2012 to restrict the use of uncertified woodstoves. In conjunction with the implementation of the SIP, the Puget Sound Clean Air Agency, which is the local air authority for the Pierce County nonattainment area, has adopted a regulation that prohibits the use of uncertified woodstoves under the authority in state law granted by the Legislature in 2012. This Puget Sound Clean Air Agency rule includes a requirement that existing uncertified woodstoves be removed or rendered inoperable unless the woodstove is the only adequate source of heat. In 2015 the EPA approved Washington's SIP and lifted the nonattainment designation for the Tacoma area.

Governor's Authority to Call an Emergency.

The Governor may declare a state of emergency in the area of the state affected by a riot, energy emergency, public disorder, or disaster that affects life, health, property, or the public peace. A state of emergency must be issued by a written proclamation and applies only to the geographic area specified in the proclamation.

An emergency proclamation enables the Governor to prohibit specific activities, such as public gatherings, transfer of combustible materials, public possession of firearms, and the use of public streets at any time during the state of emergency. In a state of emergency, the Governor may also prohibit activities as the Governor reasonably believes are necessary to help preserve and maintain life, health, property, or the public peace.

Summary of Substitute Bill:

Restrictions on Solid Fuel Burning Devices during Burn Bans.

Regardless of whether a burn ban has been called for a particular geographic area, a person may install or repair, a certified solid fuel burning device that meets ECY emissions requirements in a home or a business, or may replace an uncertified device with a certified device. A person may also temporarily install any type of solid fuel burning device in the event for the duration of an emergency power outage. During emergency power outages, burning wood in a solid fuel burning device is unrestricted regardless of whether a burn ban has been called.

An emergency power outage is defined to include: any event that leaves a home or business temporarily without an adequate alternative source of heat; or an emergency declared by the Governor for an area on the basis of disaster, public disorder, or an energy emergency.

If a person makes an unsuccessful court challenge to the use of a solid fuel burning device during an emergency power outage, the unsuccessful petitioner must pay reasonable expenses, including attorney fees, to the user of the solid fuel burning device.

Restrictions on Solid Fuel Burning Devices in Non-Attainment Areas.

The authority granted by the 2012 state law that authorizes the ECY or a local air authority to adopt a rule restricting use of uncertified woodstoves in fine particulate matter air quality nonattainment areas is restricted to areas west of the Cascade Mountains.

Substitute Bill Compared to Original Bill:

The substitute bill narrows the scope of emergency power outages during which solid fuel burning device use is allowed during burn bans to: (1) natural and human-caused events that result in loss of heat sources for homes and businesses; and (2) governor-declared emergencies, including energy emergencies, disasters, and public disorder emergencies. It limits the exemption allowing the installation of uncertified solid fuel burning devices during emergency power outages to temporary installations of uncertified devices for the duration of the power outage; and eliminates the 2017 sunset on the authority of the ECY and local air authorities to prohibit use of uncertified woodstoves in nonattainment areas, and instead restricts the authority to prohibit uncertified woodstove use to only potentially apply to nonattainment areas west of the Cascade mountains.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) After a recent windstorm in the Spokane area that knocked out power, people were worried and confused about whether or not they could use their woodstoves. The public should know that they can use a woodstove without the threat of penalties or other repercussions if there is a power outage and their woodstoves are their only option to heat their homes.

(Opposed) None.

(Other) It is the current practice of the ECY and local air authorities to not call burn bans for areas where there is a power outage, and also to hold back from enforcement of existing burn bans after a power outage occurs. Violations of woodstove restrictions are typically addressed informally, rather than in court. People should be able to heat their homes in an emergency without a fear of running afoul of air quality regulations. The optional tools in state law for communities that are out of compliance with federal air quality restrictions to restrict uncertified woodstove use should remain in place, so that more draconian regulation

of businesses does not occur instead. This bill could lead to unintended consequences by allowing the use of uncertified woodstoves, and by allowing burning during non-disaster situations where normal heat sources remain available.

Persons Testifying: (In support) Representative Shea, prime sponsor.

(Other) Stu Clark, Department of Ecology; Craig Kenworthy, Puget Sound Clean Air Agency; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.