

# FINAL BILL REPORT

## ESHB 2928

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Synopsis as Enacted

**Brief Description:** Ensuring that restrictions on outdoor burning for air quality reasons do not impede measures necessary to ensure forest resiliency to catastrophic fires.

**Sponsors:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Blake, Schmick, Dunshee, Short, Haler, Stanford and Chandler).

**House Committee on Agriculture & Natural Resources**  
**Senate Committee on Natural Resources & Parks**  
**Senate Committee on Ways & Means**

#### **Background:**

##### Air Quality Standards.

The Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the United States Environmental Protection Agency (EPA) to administer aspects of the federal Clean Air Act in Washington. Local clean air agencies have the primary responsibility for administering the state and federal Clean Air acts in counties that have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal Clean Air Act programs. Under the federal Clean Air Act, each state maintains a State Implementation Plan that describes how the state implements clean air programs to achieve the federal ambient air quality standards for air pollutants.

Under the federal Clean Air Act, the EPA sets National Ambient Air Quality Standards (NAAQS) for several pollutants including carbon monoxide and particulate matter. There are two types of NAAQS:

- Primary standards set limits to protect public health of sensitive populations such as children, the elderly, and those with conditions such as asthma.
- Secondary standards set limits to protect public welfare and address decreased visibility and damage to animals, crops, vegetation, and buildings.

Under the state Clean Air Act, Ecology sets Washington Ambient Air Quality Standards (WAAQS). Local air authorities may also adopt standards that apply within their jurisdictions, which must be at least as protective as federal standards. Local standards and WAAQS are primary standards only.

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*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.*

### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes procedures and guidelines for state and local governments to review potential environmental impacts of projects and government decisions not exempt from its provisions. The SEPA process involves the completion of an environmental checklist by a lead agency and coordination with other governments and agencies as applicable. Some projects may require the preparation of an environmental impact statement. Information collected during the SEPA process may be used to adjust project proposals to reduce potential environmental impacts.

### Outdoor Burning.

The Department of Natural Resources (DNR), Ecology, and certain political subdivisions, such as counties, conservation districts, fire protection authorities, and local air authorities, may issue permits for a variety of outdoor burning activities in their respective jurisdictions allowed under the state Clean Air Act. Outdoor burning includes agricultural burning, the burning of organic yard or gardening waste, and silvicultural burning. Outdoor burn permits may not be issued during a period of impaired air quality declared by Ecology or a local air authority, and outdoor fires may not contain any substance other than natural vegetation that normally emits dense smoke or obnoxious odors.

The DNR has direct charge and responsibility over all matters relating to forest fire services in the state. The DNR is also responsible for issuing and regulating permits for certain burning activities on lands under the DNR's fire protection authority for the following purposes:

- to abate and prevent fire hazards;
- forest firefighting instruction; and
- burning operations to improve fire-dependent ecosystems and otherwise improve the forestlands of the state.

The DNR maintains and implements the Smoke Management Plan to regulate burning on DNR-protected lands, and to meet requirements of the state Clean Air Act. The Smoke Management Plan was most recently updated in 1998.

### Forest Health Collaboratives.

A number of Forest Health Collaboratives have formed in different geographic areas around the state to carry out forest health and restoration projects. Forest Health Collaboratives are comprised of representatives of various groups, which may include industry, conservation groups, tribal governments, state, local, and federal land managers, and elected officials. Examples include the North Central Washington Forest Health Collaborative in Okanogan and Chelan counties, the Tapash Sustainable Forest Collaborative in the central Cascades and Columbia Basin, and the Northeast Washington Forestry Coalition in northeast Washington, including the Colville National Forest.

### **Summary:**

A forest resiliency burning pilot project is created. Forest resiliency burning is burning carried out by professionals in order to maintain ecosystems, mitigate wildfire potential, decrease forest insect or disease susceptibility, or otherwise enhance resiliency to fire. Forest

resiliency burns must be approved by the DNR at least 24 hours before ignition. The DNR may consider forest resiliency burning proposals that include the use of treatments prior to burning such as thinning of forest stands and grazing to clear brush. Forest resiliency burning may not be conducted at a scale that would require a revision the State Implementation Plan and is exempt from SEPA review. Implementation of the pilot project is not intended to require the DNR to update the Smoke Management Plan.

The DNR is responsible for the administration of the forest resiliency burning pilot project, and must develop the processes and procedures necessary to carry out the project. The DNR must also coordinate with a variety of organizations to conduct the pilot program including: (1) the North Central Washington Forest Health Collaborative; (2) the Tapash Sustainable Forest Collaborative; (3) the Northeast Washington Forestry Coalition; and (4) at least one other organization of public agencies and interested stakeholders whose purpose is to protect, conserve, and expand the safe and responsible use of prescribed fire on the Washington landscape. By December 1, 2018, the DNR must submit a report to the Legislature regarding the following:

- the amount of forest resiliency burning proposed, approved, and conducted;
- the quantity and severity of any air quality exceedances;
- an analysis of predicted and actual smoke conditions observed at each burn location; and
- recommendations related to the continuation or expansion of forest resiliency burning.

The report may include recommendations for future updates to the Smoke Management Plan.

Forest resiliency burning must be approved if the burning is unlikely to significantly contribute to an air quality exceedance. Once underway, multiple-day forest resiliency burning may only be stopped or postponed midway through the burn if the DNR or Ecology determines that the burn has significantly contributed to an air quality exceedance, or for safety of adjacent property.

Forest resiliency burning is exempt from certain air quality standards outlined in the state Clean Air Act. The DNR may approve forest resiliency burning when there is an air pollution episode called or forecasted, and in areas that are not in attainment with state or federal air quality standards. Forest resiliency burning remains subject to the prohibition on burning materials that normally emit dense smoke or obnoxious odors.

**Votes on Final Passage:**

House	97	0	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	49	0	(Senate receded/amended)
House	96	1	(House concurred)

**Effective:** March 21, 2016