

# HOUSE BILL REPORT

## ESHB 2928

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### As Passed Legislature

**Title:** An act relating to ensuring that restrictions on outdoor burning for air quality reasons do not impede measures necessary to ensure forest resiliency to catastrophic fires.

**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).

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 2/3/16, 2/4/16 [DPS].

#### Floor Activity:

Passed House: 2/16/16, 97-0.

Senate Amended.

Passed Senate: 3/2/16, 48-0

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 3/9/16, 49-0.

House Concurred.

Passed House: 3/10/16, 96-1.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Creates a "forest resiliency burning" pilot project administered by the Department of Natural Resources (DNR), and requires the DNR to coordinate with certain regional entities to conduct forest resiliency burning and specifies conditions under which the DNR may refuse or postpone forest resiliency burning.
- Specifies that forest resiliency burning may be conducted when other outdoor burning is restricted because of a called or forecasted air pollution episode, or because an area is not in attainment with state or federal air quality standards.

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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.*

- Allows the DNR to consider forest resiliency burning proposals which include forest thinning and grazing prior to burning.

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Walkinshaw, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Hurst, Kretz, Lytton, Orcutt, Pettigrew, Schmick, Stanford and Van De Wege.

**Staff:** Rebecca Lewis (786-7339).

### **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.

#### 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 can 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 of Engrossed Substitute Bill:**

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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) There has been work with several agencies on this issue. Prescribed burning is an essential tool to reduce the risk of catastrophic wildfires. It is better to deal with a little smoke for a short period of time due to a controlled fire than deal with a lot of smoke for a whole summer. There are very short windows of time when burning is allowed, and much uncertainty as to when burning can be done. This bill is an attempt to remove these barriers. This type of policy has been effective in other states.

Conducting forest thinning followed by prescribed burning is a very effective strategy to reduce the potential catastrophic effects of wildfires. Additionally, native plants and species thrive better when controlled burns occur. In travelling to areas where wildfires have occurred, there is a clear distinction between the areas which have been subject to thinning and prescribed burning and those that have not. There is a need for public education about the benefits of prescribed burning.

Farmers and ranchers have experienced the effects of catastrophic wildfires every year. The smoke from wildfires does not only affect those who live near the fire. During the fires in 2015, smoke caused health and other issues in the Palouse area, even though fires were miles away in central Washington.

Various groups have been working to maintain healthy, resilient forests for decades. There are three elements to reduce the risk of catastrophic wildfire: (1) respond quickly when fires start; (2) engage with local communities to plan and prepare; and (3) restore forest health with strategies such as thinning and prescribed burning. The Smoke Management Plan is 20 years old, and ambiguities in the past have caused confusion over when and where prescribed burning can occur.

Prescribed burning to reduce the impacts of catastrophic wildfires should be supported. The Department of Fish and Wildlife is expanding their active forest management program using thinning and prescribed burning. This bill would help accelerate forest treatments. There should be an amendment to require permits to be issued 24 hours prior to the prescribed burn.

(Opposed) None.

(Other) The DNR supports prescribed burning, and would like to do more. Resource scarcity is an issue. This bill would require the DNR to open up the Smoke Management Plan. Federal law does not allow air quality standards to be less restrictive than federal policy. Forest health burning is already exempt from some federal restrictions.

**Persons Testifying:** (In support) Representative Kretz, prime sponsor; Paul Dahmer, Department of Fish and Wildlife; Tom Davis, Washington Farm Bureau; and Scott Richards, The Nature Conservancy.

(Other) Mary Verner; and Karen Arnold, Department of Natural Resources.

**Persons Signed In To Testify But Not Testifying:** None.