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SENATE BILL 5658

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State of Washington

65th Legislature

2017 Regular Session

By Senator Pearson

Read first time 02/01/17. Referred to Committee on Energy,  
Environment & Telecommunications.

1 AN ACT Relating to the use of solid fuel burning devices;  
2 amending RCW 70.94.473, 70.94.430, and 70.94.431; and prescribing  
3 penalties.

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

5 **Sec. 1.** RCW 70.94.473 and 2016 c 187 s 1 are each amended to  
6 read as follows:

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

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

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

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

7 (ii) A first stage burn ban for impaired air quality may be  
8 called for a county containing fine particulate nonattainment areas  
9 or areas at risk for fine particulate nonattainment, and when  
10 feasible only for the necessary portions of the county, when  
11 forecasted meteorological conditions are predicted to cause fine  
12 particulate levels to reach or exceed thirty micrograms per cubic  
13 meter, measured on a twenty-four hour average, within seventy-two  
14 hours; and

15 (c)(i) Not burn wood in any solid fuel burning device in a  
16 geographical area and for the period of time that a second stage of  
17 impaired air quality has been determined by the department or any  
18 authority, for that area. A second stage of impaired air quality is  
19 reached when a first stage of impaired air quality has been in force  
20 and has not been sufficient to reduce the increasing fine particulate  
21 pollution trend, fine particulates are at an ambient level of twenty-  
22 five micrograms per cubic meter measured on a twenty-four hour  
23 average, and forecasted meteorological conditions are not expected to  
24 allow levels of fine particulates to decline below twenty-five  
25 micrograms per cubic meter for a period of twenty-four hours or more  
26 from the time that the fine particulates are measured at the trigger  
27 level.

28 (ii) A second stage burn ban may be called without calling a  
29 first stage burn ban only when all of the following occur and shall  
30 require the department or the local air pollution control authority  
31 calling a second stage burn ban under this subsection to comply with  
32 the requirements of subsection (3) of this section:

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

35 (B) Meteorological conditions have caused fine particulate levels  
36 to rise rapidly;

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

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

3 (iii) In fine particulate nonattainment areas or areas at risk  
4 for fine particulate nonattainment, a second stage burn ban may be  
5 called for the county containing the nonattainment area or areas at  
6 risk for nonattainment, and when feasible only for the necessary  
7 portions of the county, without calling a first stage burn ban only  
8 when (c)(ii)(A), (B), and (D) of this subsection have been met and  
9 meteorological conditions are predicted to cause fine particulate  
10 levels to reach or exceed thirty micrograms per cubic meter, measured  
11 on a twenty-four hour average, within twenty-four hours.

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

17 (3) The department or any local air pollution control authority:

18 (a) Must lift burn bans as required under subsection (1) of this  
19 section when the air temperature falls below thirty-two degrees and  
20 is forecast to remain below thirty-two degrees for forty-eight hours;

21 (b) May call a burn ban for the area where the burn ban was  
22 lifted when the air temperature rises above thirty-two degrees for  
23 six hours.

24 (4)(a) The department or any local air pollution control  
25 authority that has called a second stage burn ban under the authority  
26 of subsection (1)(c)(ii) of this section shall, within ninety days,  
27 prepare a written report describing:

28 (i) The meteorological conditions that resulted in their calling  
29 the second stage burn ban;

30 (ii) Whether the agency could have taken actions to avoid calling  
31 a second stage burn ban without calling a first stage burn ban; and

32 (iii) Any changes the department or authority is making to its  
33 procedures of calling first stage and second stage burn bans to avoid  
34 calling a second stage burn ban without first calling a first stage  
35 burn ban.

36 (b) After consulting with affected parties, the department shall  
37 prescribe the format of such a report and may also require additional  
38 information be included in the report. All reports shall be sent to  
39 the department and the department shall keep the reports on file for

1 not less than five years and available for public inspection and  
2 copying in accordance with RCW 42.56.090.

3 ~~((4))~~ (5) For the purposes of chapter 219, Laws of 2012, an  
4 area at risk for nonattainment means an area where the three-year  
5 average of the annual ninety-eighth percentile of twenty-four hour  
6 fine particulate values is greater than twenty-nine micrograms per  
7 cubic meter, based on the years 2008 through 2010 monitoring data.

8 ~~((5))~~ (6)(a) Nothing in this section restricts a person from  
9 installing or repairing a certified solid fuel burning device  
10 approved by the department under the program established under RCW  
11 70.94.457 in a residence or commercial establishment or from  
12 replacing a solid fuel burning device with a certified solid fuel  
13 burning device. Nothing in this section restricts a person from  
14 burning wood in a solid fuel burning device, regardless of whether a  
15 burn ban has been called, if there is an emergency power outage. In  
16 addition, for the duration of an emergency power outage, nothing  
17 restricts the use of a solid fuel burning device or the temporary  
18 installation, repair, or replacement of a solid fuel burning device  
19 to prevent the loss of life, health, or business.

20 (b) For the purposes of this subsection, an emergency power  
21 outage includes:

22 (i) Any natural or human-caused event beyond the control of a  
23 person that ~~((leave[s]))~~ leaves the person's residence or commercial  
24 establishment temporarily without an adequate source of heat other  
25 than the solid fuel burning device; or

26 (ii) A natural or human-caused event for which the governor  
27 declares an emergency in an area under chapter 43.06 RCW, including a  
28 public disorder, disaster, or energy emergency under RCW  
29 43.06.010(12).

30 **Sec. 2.** RCW 70.94.430 and 2011 c 96 s 49 are each amended to  
31 read as follows:

32 (1) Except as provided in subsection (2) of this section, any  
33 person who:

34 (a) Knowingly violates any of the provisions of chapter 70.94 or  
35 70.120 RCW, or any ordinance, resolution, or regulation in force  
36 pursuant thereto is guilty of a gross misdemeanor and upon conviction  
37 thereof shall be punished by a fine of not more than ten thousand  
38 dollars, or by imprisonment in the county jail for up to three  
39 hundred sixty-four days, or by both for each separate violation.

1       (~~(2) Any person who~~) (b) Negligently releases into the ambient  
2 air any substance listed by the department of ecology as a hazardous  
3 air pollutant, other than in compliance with the terms of an  
4 applicable permit or emission limit, and who at the time negligently  
5 places another person in imminent danger of death or substantial  
6 bodily harm is guilty of a gross misdemeanor and shall, upon  
7 conviction, be punished by a fine of not more than ten thousand  
8 dollars, or by imprisonment for up to three hundred sixty-four days,  
9 or both.

10       (~~(3) Any person who~~) (c) Knowingly releases into the ambient  
11 air any substance listed by the department of ecology as a hazardous  
12 air pollutant, other than in compliance with the terms of an  
13 applicable permit or emission limit, and who knows at the time that  
14 he or she thereby places another person in imminent danger of death  
15 or substantial bodily harm, is guilty of a class C felony and shall,  
16 upon conviction, be punished by a fine of not less than fifty  
17 thousand dollars, or by imprisonment for not more than five years, or  
18 both.

19       (~~(4) Any person who~~) (d) Knowingly fails to disclose a  
20 potential conflict of interest under RCW 70.94.100 is guilty of a  
21 gross misdemeanor, and upon conviction thereof shall be punished by a  
22 fine of not more than five thousand dollars.

23       (2) Any person who is in violation of RCW 70.94.473:

24       (a) For the first time must be provided educational materials  
25 regarding public health and air quality, information about obtaining  
26 or purchasing a certified solid fuel burning device as defined in RCW  
27 70.94.473(1)(b), and provided with public notice twelve hours before  
28 an enforcement action for the first offense may be taken;

29       (b) For the second time in the same calendar month is subject to  
30 a civil penalty of two hundred fifty dollars. For each subsequent  
31 violation, the amount of the civil penalty must be increased by two  
32 hundred fifty dollars for each offense.

33       **Sec. 3.** RCW 70.94.431 and 2013 c 51 s 6 are each amended to read  
34 as follows:

35       (1) Except as provided in RCW 43.05.060 through 43.05.080  
36 (~~and~~), 43.05.150, and 70.94.430(2), and in addition to or as an  
37 alternate to any other penalty provided by law, any person who  
38 violates any of the provisions of this chapter, chapter 70.120 RCW,  
39 chapter 70.310 RCW, or any of the rules in force under such chapters

1 may incur a civil penalty in an amount not to exceed ten thousand  
2 dollars per day for each violation. Each such violation shall be a  
3 separate and distinct offense, and in case of a continuing violation,  
4 each day's continuance shall be a separate and distinct violation.

5 Any person who fails to take action as specified by an order  
6 issued pursuant to this chapter shall be liable for a civil penalty  
7 of not more than ten thousand dollars for each day of continued  
8 noncompliance.

9 (2) Penalties incurred but not paid shall accrue interest,  
10 beginning on the ninety-first day following the date that the penalty  
11 becomes due and payable, at the highest rate allowed by RCW 19.52.020  
12 on the date that the penalty becomes due and payable. If violations  
13 or penalties are appealed, interest shall not begin to accrue until  
14 the thirty-first day following final resolution of the appeal.

15 The maximum penalty amounts established in this section may be  
16 increased annually to account for inflation as determined by the  
17 state office of the economic and revenue forecast council.

18 (3) Each act of commission or omission which procures, aids or  
19 abets in the violation shall be considered a violation under the  
20 provisions of this section and subject to the same penalty. The  
21 penalties provided in this section shall be imposed pursuant to RCW  
22 43.21B.300.

23 (4) All penalties recovered under this section by the department  
24 shall be paid into the state treasury and credited to the air  
25 pollution control account established in RCW 70.94.015 or, if  
26 recovered by the authority, shall be paid into the treasury of the  
27 authority and credited to its funds. If a prior penalty for the same  
28 violation has been paid to a local authority, the penalty imposed by  
29 the department under subsection (1) of this section shall be reduced  
30 by the amount of the payment.

31 (5) To secure the penalty incurred under this section, the state  
32 or the authority shall have a lien on any vessel used or operated in  
33 violation of this chapter which shall be enforced as provided in RCW  
34 60.36.050.

35 (6) Public or private entities that are recipients or potential  
36 recipients of department grants, whether for air quality related  
37 activities or not, may have such grants rescinded or withheld by the  
38 department for failure to comply with provisions of this chapter.

39 (7) In addition to other penalties provided by this chapter,  
40 persons knowingly under-reporting emissions or other information used

1 to set fees, or persons required to pay emission or permit fees who  
2 are more than ninety days late with such payments may be subject to a  
3 penalty equal to three times the amount of the original fee owed.

4 (8) By January 1, 1992, the department shall develop rules for  
5 excusing excess emissions from enforcement action if such excess  
6 emissions are unavoidable. The rules shall specify the criteria and  
7 procedures for the department and local air authorities to determine  
8 whether a period of excess emissions is excusable in accordance with  
9 the state implementation plan.

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