

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1784

66th Legislature
2019 Regular Session

Passed by the House April 18, 2019
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 16, 2019
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1784** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1784

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By House Appropriations (originally sponsored by Representatives Kretz, Blake, and Shea)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to wildfire prevention; amending RCW 76.06.200,
2 76.04.015, 70.94.6514, 70.94.6524, 70.94.6534, 70.94.6536, and
3 70.94.6538; and creating a new section.

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

5 **Sec. 1.** RCW 76.06.200 and 2017 c 95 s 1 are each amended to read
6 as follows:

7 (1) The department must establish a forest health assessment and
8 treatment framework designed to proactively and systematically
9 address the forest health issues facing the state. Specifically, the
10 framework must endeavor to achieve an initial goal of assessing and
11 treating one million acres of land by 2033.

12 (2) The department must utilize the framework to assess and treat
13 acreage in an incremental fashion each biennium. The framework
14 consists of three elements: Assessment; treatment; and progress
15 review and reporting.

16 (a) Assessment. Each biennium, the department must identify and
17 assess two hundred thousand acres of fire prone lands and communities
18 that are in need of forest health treatment, including the use of
19 prescribed fire or mechanical treatment, such as thinning.

20 (i) The scope of the assessment must include lands protected by
21 the department as well as lands outside of the department's fire

1 protection responsibilities that could pose a high risk to department
2 protected lands during a fire.

3 (ii) The assessment must identify areas in need of treatment, the
4 type or types of treatment recommended, data and planning needs to
5 carry out recommended treatment, and the estimated cost of
6 recommended treatment.

7 (b) Treatment. Each biennium, the department must review
8 previously completed assessments and prioritize and conduct as many
9 identified treatments as possible using appropriations provided for
10 that specific purpose.

11 (c) Progress review and reporting. By December 1st of each even-
12 numbered year, the department must provide the appropriate committees
13 of the legislature and the office of financial management with:

14 (i) A request for appropriations designed to implement the
15 framework in the following biennium, including assessment work and
16 conducting treatments identified in previously completed assessments;

17 (ii) A prioritized list and brief summary of treatments planned
18 to be conducted under the framework with the requested
19 appropriations, including relevant information from the assessment;
20 and

21 (iii) A list and brief summary of treatments carried out under
22 the framework in the preceding biennium, including total funding
23 available, costs for completed treatment, and treatment outcomes. The
24 summary must include any barriers to framework implementation and
25 legislative or administrative recommendations to address those
26 barriers.

27 (3) In developing and implementing the framework, the department
28 must:

29 (a) Utilize and build on the forest health strategic planning
30 initiated under section 308(11), chapter 36, Laws of 2016 sp. sess.,
31 to the maximum extent practicable, to promote the efficient use of
32 resources; (~~and~~)

33 (b) Prioritize, to the maximum extent practicable consistent with
34 this section, forest health treatments that are strategically planned
35 to serve the dual benefits of forest health maximization while
36 providing geographically planned tools for wildfire response; and

37 (c) Establish a forest health advisory committee to assist in
38 developing and implementing the framework. The committee may: (i)
39 Include representation from large and small forest landowners,
40 wildland fire response organizations, milling and log transportation

1 industries, forest collaboratives that may exist in the affected
2 areas, highly affected communities and community preparedness
3 organizations, conservation groups, and other interested parties
4 deemed appropriate by the commissioner; and (ii) consult with
5 relevant local, state, and federal agencies, and tribes.

6 (4) In implementing subsection (3)(b) of this section, the
7 department shall attempt to locate and design forest health
8 treatments in such a way as to provide wildfire response personnel
9 with strategically located treated areas to assist with managing fire
10 response. These areas must attempt to maximize the firefighting
11 benefits of natural and artificial geographic features and be located
12 in areas that prioritize the protection of commercially managed lands
13 from fires originating on public land.

14 (5) The department must establish and implement the forest health
15 assessment and treatment framework within the appropriations
16 specifically provided for this purpose.

17 **Sec. 2.** RCW 76.04.015 and 2016 c 109 s 1 are each amended to
18 read as follows:

19 (1) The department may, at its discretion, appoint trained
20 personnel possessing the necessary qualifications to carry out the
21 duties and supporting functions of the department and may determine
22 their respective salaries.

23 (2) The department shall have direct charge of and supervision of
24 all matters pertaining to the forest fire service of the state.

25 (3) The department shall:

26 (a) Enforce all laws within this chapter;

27 (b) Be empowered to take charge of and, consistent with RCW
28 76.04.021, direct the work of suppressing forest fires;

29 (c)(i) Investigate the origin and cause of all forest fires to
30 determine whether either a criminal act or negligence by any person,
31 firm, or corporation caused the starting, spreading, or existence of
32 the fire. In conducting investigations, the department shall work
33 cooperatively, to the extent possible, with utilities, property
34 owners, and other interested parties to identify and preserve
35 evidence. Except as provided otherwise in this subsection, the
36 department in conducting investigations is authorized, without court
37 order, to take possession or control of relevant evidence found in
38 plain view and belonging to any person, firm, or corporation. To the
39 extent possible, the department shall notify the person, firm, or

1 corporation of its intent to take possession or control of the
2 evidence. The person, firm, or corporation shall be afforded
3 reasonable opportunity to view the evidence and, before the
4 department takes possession or control of the evidence, also shall be
5 afforded reasonable opportunity to examine, document, and photograph
6 it. If the person, firm, or corporation objects in writing to the
7 department's taking possession or control of the evidence, the
8 department must either return the evidence within seven days after
9 the day on which the department is provided with the written
10 objections or obtain a court order authorizing the continued
11 possession or control.

12 (ii) Absent a court order authorizing otherwise, the department
13 may not take possession or control of evidence over the objection of
14 the owner of the evidence if the evidence is used by the owner in
15 conducting a business or in providing an electric utility service and
16 the department's taking possession or control of the evidence would
17 substantially and materially interfere with the operation of the
18 business or provision of electric utility service.

19 (iii) Absent a court order authorizing otherwise, the department
20 may not take possession or control of evidence over the objection of
21 an electric utility when the evidence is not owned by the utility but
22 has caused damage to property owned by the utility. However, this
23 subsection (3)(c)(iii) does not apply if the department has notified
24 the utility of its intent to take possession or control of the
25 evidence and provided the utility with reasonable time to examine,
26 document, and photograph the evidence.

27 (iv) Only personnel qualified to work on electrical equipment may
28 take possession or control of evidence owned or controlled by an
29 electric utility;

30 (d) Furnish notices or information to the public calling
31 attention to forest fire dangers and the penalties for violation of
32 this chapter;

33 (e) Be familiar with all timbered and cut-over areas of the
34 state, areas where forest health treatments were undertaken on state,
35 federal, or private land, public general transportation roads and
36 public and private logging roads, water bodies, and other features on
37 the landscape relevant in planning a fire response and include those
38 features on a geographic information system for use by fire response
39 personnel to assist in response decision making;

1 (f) Maximize the effective utilization of local fire suppression
2 assets consistent with RCW 76.04.181; and

3 (g) Regulate and control the official actions of its employees,
4 the wardens, and the rangers.

5 (4) The department may:

6 (a) Authorize all needful and proper expenditures for forest
7 protection;

8 (b) Adopt rules consistent with this section for the prevention,
9 control, and suppression of forest fires as it considers necessary
10 including but not limited to: Fire equipment and materials; use of
11 personnel; and fire prevention standards and operating conditions
12 including a provision for reducing these conditions where justified
13 by local factors such as location and weather;

14 (c) Remove at will the commission of any ranger or suspend the
15 authority of any warden;

16 (d) Inquire into:

17 (i) The extent, kind, value, and condition of all timberlands
18 within the state;

19 (ii) The extent to which timberlands are being destroyed by fire
20 and the damage thereon;

21 (e) Provide fire detection, prevention, presuppression, or
22 suppression services on nonforested public lands managed by the
23 department or another state agency, but only to the extent that
24 providing these services does not interfere with or detract from the
25 obligations set forth in subsection (3) of this section. If the
26 department provides fire detection, prevention, presuppression, or
27 suppression services on nonforested public lands managed by another
28 state agency, the department must be fully reimbursed for the work
29 through a cooperative agreement as provided for in RCW 76.04.135(1).

30 (5) Any rules adopted under this section for the suppression of
31 forest fires must include a mechanism by which a local fire
32 mobilization radio frequency, consistent with RCW 43.43.963, is
33 identified and made available during the initial response to any
34 forest fire that crosses jurisdictional lines so that all responders
35 have access to communications during the response. Different initial
36 response frequencies may be identified and used as appropriate in
37 different geographic response areas. If the fire radio communication
38 needs escalate beyond the capability of the identified local radio
39 frequency, the use of other available designated interoperability
40 radio frequencies may be used.

1 (6) When the department considers it to be in the best interest
2 of the state, it may cooperate with any agency of another state, the
3 United States or any agency thereof, the Dominion of Canada or any
4 agency or province thereof, and any county, town, corporation,
5 individual, or Indian tribe within the state of Washington in forest
6 firefighting and patrol.

7 **Sec. 3.** RCW 70.94.6514 and 2009 c 118 s 103 are each amended to
8 read as follows:

9 (1) Consistent with the policy of the state to reduce outdoor
10 burning to the greatest extent practical, outdoor burning shall not
11 be allowed in:

12 (a) Any area of the state where federal or state ambient air
13 quality standards are exceeded for pollutants emitted by outdoor
14 burning; or

15 (b) Any urban growth area as defined by RCW 36.70A.030, or any
16 city of the state having a population greater than ten thousand
17 people if such cities are threatened to exceed state or federal air
18 quality standards, and alternative disposal practices consistent with
19 good solid waste management are reasonably available or practices
20 eliminating production of organic refuse are reasonably available.

21 (2) Notwithstanding any other provision of this section, outdoor
22 burning may be allowed for the exclusive purpose of managing storm or
23 flood-related debris. The decision to allow burning shall be made by
24 the entity with permitting jurisdiction as determined under RCW
25 70.94.6534 or 70.94.6518. If outdoor burning is allowed in areas
26 subject to subsection (1)(a) or (b) of this section, a permit shall
27 be required, and a fee may be collected to cover the expenses of
28 administering and enforcing the permit. All conditions and
29 restrictions pursuant to RCW 70.94.6526(1) and 70.94.6512 apply to
30 outdoor burning allowed under this section.

31 (3)(a) Outdoor burning that is normal, necessary, and customary
32 to ongoing agricultural activities, that is consistent with
33 agricultural burning authorized under RCW 70.94.6528 and 70.94.6532,
34 is allowed within the urban growth area in accordance with RCW
35 70.94.6528(8)(a).

36 (b) Outdoor burning of cultivated orchard trees shall be allowed
37 as an ongoing agricultural activity under this section in accordance
38 with RCW 70.94.6528(8)(b).

1 (4) This section shall not apply to silvicultural burning used to
2 improve or maintain fire dependent ecosystems for rare plants or
3 animals within state, federal, and private natural area preserves,
4 natural resource conservation areas, parks, and other wildlife areas.

5 (5) Notwithstanding any other provisions of this section, outdoor
6 burning that reduces the risk of a wildfire, or is normal, necessary,
7 and customary to ongoing silvicultural activities consistent with
8 silvicultural burning authorized under RCW 70.94.6534(1), is allowed
9 within the urban growth area in accordance with RCW 70.94.6534.
10 Before issuing a burn permit within the urban growth area for any
11 burn that exceeds one hundred tons of material, the department of
12 natural resources shall consult with department of ecology and
13 condition the issuance and use of such permits to comply with air
14 quality standards established by the department of ecology.

15 **Sec. 4.** RCW 70.94.6524 and 2009 c 118 s 301 are each amended to
16 read as follows:

17 (1) It shall be the responsibility and duty of the department of
18 natural resources, department of ecology, department of agriculture,
19 county fire marshals in consultation with fire districts, and local
20 air pollution control authorities to establish, through regulations,
21 ordinances, or policy, a limited burning permit program.

22 (2) The permit program shall apply to residential and land
23 clearing burning in the following areas:

24 (a) In the nonurban areas of any county with an unincorporated
25 population of greater than fifty thousand; and

26 (b) In any city and urban growth area that is not otherwise
27 prohibited from burning pursuant to RCW 70.94.6514.

28 (3) The permit program shall apply only to land clearing burning
29 in the nonurban areas of any county with an unincorporated population
30 of less than fifty thousand.

31 (4) The permit program may be limited to a general permit by
32 rule, or by verbal, written, or electronic approval by the permitting
33 entity.

34 (5) Notwithstanding any other provision of this section, neither
35 a permit nor the payment of a fee shall be required for outdoor
36 burning for the purpose of disposal of tumbleweeds blown by wind.
37 Such burning shall not be conducted during an air pollution episode
38 or any stage of impaired air quality declared under RCW 70.94.715.

1 This subsection (5) shall only apply within counties with a
2 population less than two hundred fifty thousand.

3 (6) Burning shall be prohibited in an area when an alternate
4 technology or method of disposing of the organic refuse is available,
5 reasonably economical, and less harmful to the environment. It is the
6 policy of this state to foster and encourage development of alternate
7 methods or technology for disposing of or reducing the amount of
8 organic refuse.

9 (7) Incidental agricultural burning must be allowed without
10 applying for any permit and without the payment of any fee if:

11 (a) The burning is incidental to commercial agricultural
12 activities;

13 (b) The operator notifies the local fire department within the
14 area where the burning is to be conducted;

15 (c) The burning does not occur during an air pollution episode or
16 any stage of impaired air quality declared under RCW 70.94.715; and

17 (d) Only the following items are burned:

18 (i) Orchard prunings;

19 (ii) Organic debris along fence lines or irrigation or drainage
20 ditches; or

21 (iii) Organic debris blown by wind.

22 (8) As used in this section, "nonurban areas" are unincorporated
23 areas within a county that are not designated as urban growth areas
24 under chapter 36.70A RCW.

25 (9) Nothing in this section shall require fire districts to
26 enforce air quality requirements related to outdoor burning, unless
27 the fire district enters into an agreement with the department of
28 ecology, department of natural resources, a local air pollution
29 control authority, or other appropriate entity to provide such
30 enforcement.

31 **Sec. 5.** RCW 70.94.6534 and 2010 1st sp.s. c 7 s 128 are each
32 amended to read as follows:

33 (1) The department of natural resources (~~shall have the~~
34 ~~responsibility~~) is responsible for issuing and regulating burning
35 permits required by it relating to the following activities for the
36 protection of life or property (~~and/or~~) and for the public health,
37 safety, and welfare:

38 (a) Abating or prevention of a forest fire hazard;

1 (b) (~~Prevention of a fire hazard~~) Reducing the risk of a
2 wildfire under RCW 70.94.6514(5);

3 (c) Instruction of public officials in methods of forest
4 firefighting;

5 (d) Any silvicultural operation to improve the forestlands of the
6 state, including but not limited to forest health and resiliency,
7 decreasing forest insect or disease susceptibility, maintaining or
8 restoring native vegetation, or otherwise enhancing resiliency to
9 fire; and

10 (e) Silvicultural burning used to improve or maintain fire
11 dependent ecosystems for rare plants or animals within state,
12 federal, and private natural area preserves, natural resource
13 conservation areas, parks, and other wildlife areas.

14 (2) The department of natural resources shall not retain such
15 authority, but it shall be the responsibility of the appropriate fire
16 protection agency for permitting and regulating outdoor burning on
17 lands where the department of natural resources does not have fire
18 protection responsibility, except for the issuance of permits for
19 reducing the risk of wildfire under RCW 70.94.6514(5). The department
20 of natural resources may enter into cooperative agreements with local
21 fire protection agencies to issue permits for reducing wildfire risk
22 under RCW 70.94.6514(5).

23 (3) Permit fees shall be assessed for wildfire risk reduction and
24 for silvicultural burning under the jurisdiction of the department of
25 natural resources and collected by the department of natural
26 resources as provided for in this section. All fees shall be
27 deposited in the air pollution control account, created in RCW
28 70.94.015. The legislature shall appropriate to the department of
29 natural resources funds from the air pollution control account to
30 enforce and administer the program under this section and RCW
31 70.94.6536, 70.94.6538, and 70.94.6540. Fees shall be set by rule by
32 the department of natural resources at the level necessary to cover
33 the costs of the program after receiving recommendations on such fees
34 from the public.

35 **Sec. 6.** RCW 70.94.6536 and 1995 c 143 s 1 are each amended to
36 read as follows:

37 (1) (a) The department of natural resources shall administer a
38 program to reduce statewide emissions from silvicultural forest
39 burning so as to achieve the following minimum objectives:

1 ~~((a))~~ (i) Twenty percent reduction by December 31, 1994,
2 providing a ceiling for emissions until December 31, 2000; and

3 ~~((b))~~ (ii) Fifty percent reduction by December 31, 2000,
4 providing a ceiling for emissions thereafter.

5 (b) Reductions shall be calculated from the average annual
6 emissions level from calendar years 1985 to 1989, using the same
7 methodology for both reduction and base year calculations.

8 (2) (a) The department of natural resources, within twelve months
9 after May 15, 1991, shall develop a plan, based upon the existing
10 smoke management agreement to carry out the programs as described in
11 this section in the most efficient, cost-effective manner possible.
12 The plan shall be developed in consultation with the department of
13 ecology, public and private landowners engaged in silvicultural
14 forest burning, and representatives of the public.

15 (b) The plan shall recognize the variations in silvicultural
16 forest burning including, but not limited to, a landowner's
17 responsibility to abate an extreme fire hazard under chapter 76.04
18 RCW and other objectives of burning, including abating and preventing
19 a fire hazard, geographic region, climate, elevation and slope,
20 proximity to populated areas, ~~((and))~~ diversity of land ownership,
21 improving forest health and resiliency, decreasing forest insect or
22 disease susceptibility, maintaining or restoring native vegetation,
23 or otherwise enhancing resiliency to fire. The plan shall establish
24 priorities that the department of natural resources shall use to
25 allocate allowable emissions, including but not limited to, forest
26 health and resiliency, silvicultural burning used to improve or
27 maintain fire dependent ecosystems for rare plants or animals within
28 state, federal, and private natural area preserves, natural resource
29 conservation areas, parks, and other wildlife areas. The plan shall
30 also recognize the real costs of the emissions program and recommend
31 equitable fees to cover the costs of the program.

32 (c) The emission reductions in this section are to apply to all
33 forestlands including those owned and managed by the United States.
34 If the United States does not participate in implementing the plan,
35 the departments of natural resources and ecology shall use all
36 appropriate and available methods or enforcement powers to ensure
37 participation.

38 (d) The plan shall include a tracking system designed to measure
39 the degree of progress toward the emission reductions goals set in
40 this section. The department of natural resources shall report

1 annually to the department of ecology and the legislature on the
2 status of the plan, emission reductions and progress toward meeting
3 the objectives specified in this section, and the goals of this
4 chapter and chapter 76.04 RCW.

5 (3) If the December 31, 1994, emission reductions targets in this
6 section are not met, the department of natural resources, in
7 consultation with the department of ecology, shall use its authority
8 granted in this chapter and chapter 76.04 RCW to immediately limit
9 emissions from such burning to the 1994 target levels and limit
10 silvicultural forest burning in subsequent years to achieve equal
11 annual incremental reductions so as to achieve the December 31, 2000,
12 target level. If, as a result of the program established in this
13 section, the emission reductions are met in 1994, but are not met by
14 December 31, 2000, the department of natural resources in
15 consultation with the department of ecology shall immediately limit
16 silvicultural forest burning to reduce emissions from such burning to
17 the December 31, 2000, target level in all subsequent years.

18 (4) Emissions from silvicultural burning in eastern Washington
19 that is conducted for the purpose of restoring forest health or
20 preventing the additional deterioration of forest health are exempt
21 from the reduction targets and calculations in this section if the
22 following conditions are met:

23 (a) The landowner submits a written request to the department
24 identifying the location of the proposed burning and the nature of
25 the forest health problem to be corrected. The request shall include
26 a brief description of alternatives to silvicultural burning and
27 reasons why the landowner believes the alternatives not to be
28 appropriate.

29 (b) The department determines that the proposed silvicultural
30 burning operation is being conducted to restore forest health or
31 prevent additional deterioration to forest health; meets the
32 requirements of the state smoke management plan to protect public
33 health, visibility, and the environment; and will not be conducted
34 during an air pollution episode or during periods of impaired air
35 quality in the vicinity of the proposed burn.

36 (c) Upon approval of the request by the department and before
37 burning, the landowner is encouraged to notify the public in the
38 vicinity of the burn of the general location and approximate time of
39 ignition.

1 (5) The department of ecology may conduct a limited, seasonal
2 ambient air quality monitoring program to measure the effects of
3 forest health burning conducted under subsection (4) of this section.
4 The monitoring program may be developed in consultation with the
5 department of natural resources, private and public forest
6 landowners, academic experts in forest health issues, and the general
7 public.

8 **Sec. 7.** RCW 70.94.6538 and 2009 c 118 s 502 are each amended to
9 read as follows:

10 The department of natural resources, in granting burning permits
11 for fires for the purposes set forth in RCW 70.94.6534, shall
12 condition the issuance and use of such permits to comply to the
13 extent feasible with air quality standards established by the
14 department of ecology (~~after full consultation with the department~~
15 ~~of natural resources~~). Such burning shall not cause the state air
16 quality standards to be exceeded in the ambient air up to two
17 thousand feet above ground level over critical areas designated by
18 the department of ecology, otherwise subject to air pollution from
19 other sources. Air quality standards shall be established and
20 published by the department of ecology which shall also establish a
21 procedure for advising the department of natural resources when and
22 where air contaminant levels exceed or threaten to exceed the ambient
23 air standards over such critical areas. The air quality shall be
24 quantitatively measured by the department of ecology or the
25 appropriate local air pollution control authority at established
26 monitoring stations over such designated areas. Further, such
27 permitted burning shall not cause damage to public health or the
28 environment. All permits issued under this section shall be subject
29 to all applicable fees, permitting, penalty, and enforcement
30 provisions of this chapter. The department of natural resources shall
31 set forth smoke dispersal objectives designed consistent with this
32 section to minimize any air pollution from such burning and the
33 procedures necessary to meet those objectives.

34 The department of natural resources shall encourage more intense
35 utilization in logging and alternative silviculture practices to
36 reduce the need for burning. The department of natural resources
37 shall, whenever practical, encourage landowners to develop and use
38 alternative acceptable disposal methods subject to the following
39 priorities: (1) Slash production minimization, (2) slash utilization,

1 (3) nonburning disposal, (4) silvicultural burning. Such alternative
2 methods shall be evaluated as to the relative impact on air, water,
3 and land pollution, public health, and their financial feasibility.

4 The department of natural resources shall not issue burning
5 permits and shall revoke previously issued permits at any time in any
6 area where the department of ecology or local board has declared a
7 stage of impaired air quality as defined in RCW 70.94.473.

8 NEW SECTION. **Sec. 8.** If specific funding for the purposes of
9 this act, referencing this act by bill or chapter number, is not
10 provided by June 30, 2019, in the omnibus appropriations act, this
11 act is null and void.

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