

# HOUSE BILL REPORT

## SHB 2326

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### As Amended by the Senate

**Title:** An act relating to protecting air quality that is impacted by high emitting solid fuel burning devices.

**Brief Description:** Protecting air quality that is impacted by high emitting solid fuel burning devices.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Jinkins, Ladenburg, Darneille, Fitzgibbon, Upthegrove, Seaquist, Moscoso, Green, Kagi, Billig, Tharinger, Pollet, Wylie, Reykdal, McCoy, Eddy, Hunt and Lytton).

### Brief History:

#### Committee Activity:

Environment: 1/17/12, 1/26/12 [DPS].

#### Floor Activity:

Passed House: 2/10/12, 66-30.

Senate Amended.

Passed Senate: 3/2/12, 26-21.

### Brief Summary of Substitute Bill

- Authorizes the Department of Ecology (Ecology) or a local air pollution control authority to call a first stage of impaired air quality, as well as a second stage of impaired air quality, at a level below the federal standard.
- Allows Ecology or a local air pollution control authority to prohibit the use of fireplaces in areas of nonattainment for fine particulate matter, if needed to meet federal requirements as a contingency measure in a state implementation plan.
- Allows a city, county, or local health department to assist with enforcement of a prohibition on the use of solid fuel burning devices in a nonattainment area.
- Adds new definitions for terms used in the section of law related to limitations on the use of solid fuel burning devices.

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### HOUSE COMMITTEE ON ENVIRONMENT

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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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Jinkins, Morris, Moscoso, Pollet, Takko and Wylie.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Nealey, Pearson, Shea and Taylor.

**Staff:** Anna Jackson (786-7194).

### **Background:**

#### Clean Air Act Emissions Standards.

The federal Clean Air Act requires the United States Environmental Protection Agency (EPA) to set air quality standards for certain pollutants that harm public health and the environment. One of those pollutants is fine particulate matter. In Washington, wood smoke has been identified as a major source of fine particulate matter that can negatively affect air quality standards in an area.

The EPA may designate an area as an area of nonattainment if there is a pattern of failure to reach and maintain 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 a plan to reach attainment. This designation can cause additional requirements for all sources emitting fine particulate matter, including industrial and household sources.

#### Burn Bans.

In Washington, the Department of Ecology (Ecology) or the local air pollution control authority may impose a burn ban when it forecasts that fine particulate pollution levels will exceed the federal 24-hour standard of 35 micrograms per cubic meter. Burn bans are tiered, so Ecology or the local air pollution control authority will typically first call a Stage One burn ban. If a 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, Ecology or the local air pollution control authority may call a Stage Two burn ban without first calling a Stage One burn ban.

#### Solid Fuel Burning Devices.

Washington's Clean Air Act contains laws about 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 woodstove and fireplace [RCW 70.94.453(5)]. Prohibitions exist on burning a number of materials in a solid fuel burning device, including any substance, other than properly seasoned fuel wood, that emits dense smoke or obnoxious odors. To achieve and maintain attainment in areas of nonattainment for fine particulates under federal law, Ecology

or the local air pollution control authority may prohibit the use of solid fuel burning devices, except for fireplaces, woodstoves meeting standards in state law, and pellet stoves.

Prior to prohibiting the use of solid fuel burning devices, Ecology or the local air pollution control authority must seek input from the affected local government, make written findings, and meet other requirements. Ecology or the local air pollution control authority has sole authority for enforcing the prohibition.

### **Summary of Substitute Bill:**

#### First and Second Stage Burn Bans.

The thresholds for when the Department of Ecology (Ecology) or a local air pollution control authority may call a first and second stage burn ban due to impaired air quality in a nonattainment area are lowered. A first stage of impaired air quality is reached when forecasted meteorological conditions are predicted to cause fine particulate levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 72 hours.

The threshold for reaching a second stage of impaired air quality is lowered to when fine particulates are at an ambient level of 25 micrograms per cubic meter, measured on a 24-hour average, and forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below 25 micrograms per cubic meter. Ecology or the local air pollution control authority may call a second stage burn ban without first calling a first stage burn ban when, in addition to meeting other requirements, fine particulate levels have reached or exceeded 25 micrograms per cubic meter, measured on a 24-hour average, and meteorological conditions are predicted to cause fine particulate levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 24 hours.

#### Prohibitions on the Use of Solid Fuel Burning Devices.

Ecology or a local air pollution control authority may prohibit the use of fireplaces in areas of nonattainment for fine particulate matter, if needed to meet federal requirements as a contingency measure in a state implementation plan.

A city, county, or local health department may agree to assist Ecology or a local air pollution control authority with enforcement of a prohibition on the use of solid fuel burning devices in a nonattainment area.

"Seasoned fuel wood" is defined as firewood for use in a solid fuel burning device that has a moisture content of no more than 20 percent.

"Prohibit the use" or "prohibition" are defined as the ability for Ecology or a local air pollution control authority to include requiring disclosure, removal, rendering inoperable, providing evidence of destruction, or other similar requirements approved by rule.

#### Report to Legislature.

Ecology and local air agencies must report back to the appropriate standing committees of the Legislature by December 31, 2014, as well as every two years thereafter through 2018, on progress toward achieving attainment in areas currently in nonattainment, and on whether any other implementation tools are needed to achieve attainment.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment:

- adds requirements specifying when a first and second stage of impaired air quality may be called in areas designated in nonattainment for fine particulates, or in areas at risk of nonattainment;
- defines an "area at risk for nonattainment" as an area where the three-year average of the annual ninety-eighth percentile of 24 hour fine particulate values is greater than twenty-nine micrograms per cubic meter, based on the years 2008 through 2010 monitoring data;
- removes the definition of "seasoned fuel wood" included in the original version of the bill;
- specifies that a city, county, or jurisdictional health department serving a fine particulate nonattainment area may agree to assist the Department of Ecology (Ecology) or a local air authority with enforcement activities;
- specifies that "prohibit the use" or "prohibition" of the use of solid fuel burning devices by the Ecology or a local air authority may include requiring disclosure of an uncertified device, removal, or rendering inoperable, as may be approved by rule by the Ecology or a local air authority; prohibits the Ecology or a local air authority from implementing such a prohibition prior to January 1, 2015;
- specifies that a prohibition on the use of solid fuel burning devices may not include imposing separate time of sale obligations on the seller or buyer of real estate as part of a real estate transaction, except as provided in RCW 64.06.020 related to the seller disclosure of wood burning appliances;
- exempts a person with a shop or garage that is detached from the main residence or commercial establishment, that does not have an adequate source of heat in the detached shop or garage without burning wood, from adhering to a prohibition on the use of a solid fuel burning device issued by the Ecology or a local air authority;
- requires the Ecology or a local air authority to provide assistance, within existing resources, to households using solid fuel burning devices to reduce the emissions from those devices or change out to a lower emission device prior to January 1, 2015; prior to the effective date of a prohibition, the Ecology or a local air authority must provide public education in the nonattainment area regarding how households can reduce their emissions through cleaner burning practices, the importance of respecting burn bans, and opportunities for assistance in obtaining a cleaner device; and
- authorizes the Ecology or a local air authority to prohibit the use of uncertified devices if an area is designated as a nonattainment area as of January 1, 2015, if required by the United States Environmental Protection Agency.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) Pierce County is currently in nonattainment under the federal Clean Air Act. This raises a number of concerns, ranging from health and human safety to significant negative economic impacts on businesses in areas of nonattainment due to more stringent environmental regulations. This is a practical bill that reflects the work and recommendations of a lengthy stakeholder effort on the part of the Puget Sound Clean Air Agency.

The stakeholder task force convened around the issue of nonattainment in Pierce County was comprised of a wide range of interested parties, and this task force came up with the recommendations contained in this bill. While approximately half of the air pollution during winter months in Pierce County comes from wood smoke, the task force has recognized the legislative direction included in prior bills to exempt wood stoves from a burn ban if it is a resident's only heat source. The committee should implement the task force's recommendations and pass this bill.

(Opposed) None.

**Persons Testifying:** Representative Jinkins, prime sponsor; Gary Smith, Independent Business Association; Craig Kenworthy, Puget Sound Clean Air Agency; and Anthony Chen, Tacoma-Pierce County Health Department.

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