

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2326

62nd Legislature
2012 Regular Session

Passed by the House March 5, 2012
Yeas 62 Nays 32

Speaker of the House of Representatives

Passed by the Senate March 2, 2012
Yeas 26 Nays 21

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2326** 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**

SUBSTITUTE HOUSE BILL 2326

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

By House Environment (originally sponsored by Representatives
Jenkins, Ladenburg, Darneille, Fitzgibbon, Upthegrove, Sequist,
Moscoso, Green, Kagi, Billig, Tharinger, Pollet, Wylie, Reykdal,
McCoy, Eddy, Hunt, and Lytton)

READ FIRST TIME 01/27/12.

1 AN ACT Relating to protecting air quality that is impacted by high
2 emitting solid fuel burning devices; amending RCW 70.94.473 and
3 70.94.477; adding a new section to chapter 70.94 RCW; and providing an
4 expiration date.

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

6 **Sec. 1.** RCW 70.94.473 and 2008 c 40 s 1 are each amended to read
7 as follows:

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

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

13 (b) Not burn wood in any solid fuel burning device except those
14 which are either Oregon department of environmental quality phase II or
15 United States environmental protection agency certified or certified by
16 the department under RCW 70.94.457(1) or a pellet stove either
17 certified or issued an exemption by the United States environmental
18 protection agency in accordance with Title 40, Part 60 of the code of

1 federal regulations, in the geographical area and for the period of
2 time that a first stage of impaired air quality has been determined, by
3 the department or any authority, for that area.

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

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

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

29 (ii) A second stage burn ban may be called without calling a first
30 stage burn ban only when all of the following occur and shall require
31 the department or the local air pollution control authority calling a
32 second stage burn ban under this subsection to comply with the
33 requirements of subsection ((+4)) (3) of this section:

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

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

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

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

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

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

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

25 (a) The meteorological conditions that resulted in their calling
26 the second stage burn ban;

27 (b) Whether the agency could have taken actions to avoid calling a
28 second stage burn ban without calling a first stage burn ban; and

29 (c) Any changes the department or authority is making to its
30 procedures of calling first stage and second stage burn bans to avoid
31 calling a second stage burn ban without first calling a first stage
32 burn ban.

33 After consulting with affected parties, the department shall
34 prescribe the format of such a report and may also require additional
35 information be included in the report. All reports shall be sent to
36 the department and the department shall keep the reports on file for
37 not less than five years and available for public inspection and
38 copying in accordance with RCW 42.56.090.

1 ~~(4) ((The department and local air pollution control authorities~~
2 ~~shall evaluate the effectiveness of the burn ban programs contained in~~
3 ~~this section in avoiding fine particulate levels to exceed thirty-five~~
4 ~~micrograms per cubic meter, measured on a twenty-four hour average, and~~
5 ~~provide a joint report of the results to the legislature by September~~
6 ~~1, 2011.))~~ For the purposes of this act, an area at risk for
7 nonattainment means an area where the three-year average of the annual
8 ninety-eighth percentile of twenty-four hour fine particulate values is
9 greater than twenty-nine micrograms per cubic meter, based on the years
10 2008 through 2010 monitoring data.

11 **Sec. 2.** RCW 70.94.477 and 2009 c 282 s 1 are each amended to read
12 as follows:

13 (1) Unless allowed by rule under chapter 34.05 RCW, a person shall
14 not cause or allow any of the following materials to be burned in any
15 residential solid fuel burning device:

- 16 (a) Garbage;
- 17 (b) Treated wood;
- 18 (c) Plastics;
- 19 (d) Rubber products;
- 20 (e) Animals;
- 21 (f) Asphaltic products;
- 22 (g) Waste petroleum products;
- 23 (h) Paints; or
- 24 (i) Any substance, other than properly seasoned fuel wood, which
25 normally emits dense smoke or obnoxious odors.

26 (2) To achieve and maintain attainment in areas of nonattainment
27 for fine particulates in accordance with section 172 of the federal
28 clean air act, a local air pollution control authority or the
29 department may, after meeting requirements in subsection (3) of this
30 section, prohibit the use of solid fuel burning devices, except:

- 31 (a) Fireplaces as defined in RCW 70.94.453(3), except if needed to
32 meet federal requirements as a contingency measure in a state
33 implementation plan for a fine particulate nonattainment area;
- 34 (b) Woodstoves meeting the standards set forth in RCW
35 70.94.473(1)(b); or
- 36 (c) Pellet stoves.

1 (3) Prior to prohibiting the use of solid fuel burning devices
2 under subsection (2) of this section, the department or the local air
3 pollution control authority must:

4 (a) Seek input from any city, county, or jurisdictional health
5 department affected by the proposal to prohibit the use of solid fuel
6 burning devices; and

7 (b) Make written findings that:

8 (i) The area is designated as an area of nonattainment for fine
9 particulate matter by the United States environmental protection
10 agency, or is in maintenance status under that designation;

11 (ii) Emissions from solid fuel burning devices in the area are a
12 major contributing factor for violating the national ambient air
13 quality standard for fine particulates; and

14 (iii) The area has an adequately funded program to assist low-
15 income households to secure an adequate source of heat, which may
16 include woodstoves meeting the requirements of RCW 70.94.453(2).

17 (4) If and only if the nonattainment area is within the
18 jurisdiction of the department and the legislative authority of a city
19 or county within the area of nonattainment formally expresses concerns
20 with the department's written findings, then the department must
21 publish on the department's web site the reasons for prohibiting the
22 use of solid fuel burning devices under subsection (2) of this section
23 that includes a response to the concerns expressed by the city or
24 county legislative authority.

25 (5) When a local air pollution control authority or the department
26 prohibits the use of solid fuel burning devices as authorized by this
27 section, the cities, counties, and jurisdictional health departments
28 serving the area shall cooperate with the department or local air
29 pollution control authority as the department or the local air
30 pollution control authority implements the prohibition. ~~((However,~~
31 ~~cooperation shall not include enforcement of this prohibition.))~~ The
32 responsibility for actual enforcement of the prohibition shall reside
33 solely with the department or the local air pollution control
34 authority. A city, county, or jurisdictional health department serving
35 a fine particulate nonattainment area may agree to assist with
36 enforcement activities.

37 (6) A prohibition issued by a local air pollution control authority

1 or the department under this section shall not apply to (~~a person in~~
2 ~~a residence or commercial establishment that does not have an adequate~~
3 ~~source of heat without burning wood~~);

4 (a) A person in a residence or commercial establishment that does
5 not have an adequate source of heat without burning wood; or

6 (b) A person with a shop or garage that is detached from the main
7 residence or commercial establishment that does not have an adequate
8 source of heat in the detached shop or garage without burning wood.

9 (7) On the effective date of this section, and prior to January 1,
10 2015, the local air pollution control authority or the department
11 shall, within available resources, provide assistance to households
12 using solid fuel burning devices to reduce the emissions from those
13 devices or change out to a lower emission device. Prior to the
14 effective date of a prohibition, as defined in this section, on the use
15 of uncertified stoves, the department or local air pollution control
16 authority shall provide public education in the nonattainment area
17 regarding how households can reduce their emissions through cleaner
18 burning practices, the importance of respecting burn bans, and the
19 opportunities for assistance in obtaining a cleaner device. If the
20 area is designated as a nonattainment area as of January 1, 2015, or if
21 required by the United States environmental protection agency, the
22 local air pollution control authority or the department may prohibit
23 the use of uncertified devices.

24 (8) As used in this section((7)):

25 (a) "Jurisdictional health department" means a city, county, city-
26 county, or district public health department.

27 (b) "Prohibit the use" or "prohibition" may include requiring
28 disclosure of an uncertified device, removal, or rendering inoperable,
29 as may be approved by rule by a local air pollution control authority
30 or the department. The effective date of such a rule may not be prior
31 to January 1, 2015. However, except as provided in RCW 64.06.020
32 relating to the seller disclosure of wood burning appliances, any such
33 prohibition may not include imposing separate time of sale obligations
34 on the seller or buyer of real estate as part of a real estate
35 transaction.

36 NEW SECTION. Sec. 3. A new section is added to chapter 70.94 RCW
37 to read as follows:

1 (1) The department of ecology and local air pollution control
2 authorities shall report back to the appropriate standing committees of
3 the legislature by December 31, 2014, and every two years thereafter,
4 on progress toward achieving attainment for areas of nonattainment that
5 the revised burn ban and prohibition requirements contained in RCW
6 70.94.473 and 70.94.477 were enacted to address, as well as whether
7 other implementation tools are necessary to achieve attainment.

8 (2) This section expires January 1, 2019.

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