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**ENGROSSED SUBSTITUTE SENATE BILL 5279**

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

**By** Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Warnick, and Short)

AN ACT Relating to regulating outdoor burning for the protection of life or property and for public health, safety, and welfare; and amending RCW 70.94.6514, 70.94.6524, 70.94.6534, 70.94.6536, and 70.94.6538.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

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

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

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

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

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

(d) Only the following items are burned:

(i) Orchard prunings;

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

(iii) Organic debris blown by wind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

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

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

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

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

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

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

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

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

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

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

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