

# SENATE BILL REPORT

## SHB 1423

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As Passed Senate, April 11, 2021

**Title:** An act relating to smoke management civil enforcement.

**Brief Description:** Concerning smoke management civil enforcement.

**Sponsors:** House Committee on Environment & Energy (originally sponsored by Representatives Fitzgibbon, Springer and Dent; by request of Department of Natural Resources).

**Brief History:** Passed House: 3/1/21, 95-2.

**Committee Activity:** Environment, Energy & Technology: 3/17/21, 3/23/21 [DP, DNP, w/oRec].

**Floor Activity:** Passed Senate: 4/11/21, 44-5.

### Brief Summary of Bill

- Provides that a civil penalty may be issued to a person who violates the requirement to have a burning permit issued by the Department of Natural Resources (DNR) to burn flammable material, refuse, or waste forest material on lands protected by DNR.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Hobbs, Lias, Nguyen, Sheldon, Short, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senator Ericksen, Ranking Member.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Brown and Fortunato.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Gregory Vogel (786-7413)

**Background:** Department of Natural Resources Permits for Burning Activities. The Department of Natural Resources (DNR) is responsible for issuing and regulating permits for certain burning activities on lands under the DNR's fire protection authority to abate and prevent fire hazards, facilitate forest firefighting instruction, and enable burning operations to improve fire-dependent ecosystems and otherwise improve the forestlands of the state. Outdoor burning may be allowed for managing storm or flood-related debris.

Conditions may be imposed in the permit for protection of life, property, or air quality and DNR may suspend or revoke the permits when conditions warrant.

DNR, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary to prevent air pollution.

The Washington Clean Air Act. The Washington Clean Air Act (act) regulates outdoor air pollution. The act defines "air pollution" as the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

Air pollution control regulations address emissions of air contaminants that injure health or unreasonably interfere with enjoyment of life and property. Enforcement authority for the act is generally handled either by the Department of Ecology or by one of the seven regional clean air agencies within Washington, depending on the county in which the source is located.

Any person who violates any of the provisions of the act may incur a civil penalty not to exceed \$10,000 per day for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation, each day's continuance is a separate and distinct violation.

**Summary of Bill:** A person who violates the requirement to have a valid, written burning permit obtained from DNR to burn any flammable material on any lands under the protection of DNR, or to burn refuse or waste forest material on forestlands protected by DNR may incur a civil penalty under the act, not to exceed \$10,000 per day for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation, each day's continuance is a separate and distinct violation.

Civil enforcement actions related to violations of the burning permit statute must be consistent with the provisions of the burning permit statute.

DNR must adopt a rule that establishes a framework for resolving conflicts that may arise

related to the burning permit statute, including the issuance of civil penalties; and the method by which penalties related to violations of the burning permit statute will be calculated.

DNR must conduct a public process to solicit input on the development of the rule.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The updated smoke management plan provides additional opportunities for silvicultural burning when favorable atmospheric conditions are in place. Cleaner burning also means less smoke. DNR regulates silvicultural burning while Ecology and local clean air agencies regulate other types of burning. Ecology provides technical assistance to DNR for their smoke management plan. EPA requires clear authority for civil enforcement against permit violations. Current law is unclear on civil penalty authority. The bill remedies this by providing clear civil penalty authority for violations.

The burn permits include permits for prescribed burns and slash pile management. The smoke management plan process was an inclusive process for those involved and it is in the parties' best interests to have the plan approved by EPA. Landowners have high compliance rates and little if no enforcement action been taken against them. We want to ensure that this relationship is not changed.

The bill is intended to provide DNR authority to issue civil penalties as a last resort for violations of permits. We are working to increase the pace and scale of prescribed burning, and need the approval of civil penalties. DNR is committed to a public process for the conflict resolution framework and how penalties will be calculated.

**Persons Testifying:** PRO: Kathy Taylor, Department of Ecology; Jason Callahan, Washington Forest Protection Association; Loren Torgerson, Department of Natural Resources.

**Persons Signed In To Testify But Not Testifying:** No one.