

SHB 2326 - S COMM AMD  
By Committee on Environment

NOT ADOPTED 03/02/2012

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 70.94.473 and 2008 c 40 s 1 are each amended to read  
4 as follows:

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

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

10 (b) Not burn wood in any solid fuel burning device except those  
11 which are either Oregon department of environmental quality phase II or  
12 United States environmental protection agency certified or certified by  
13 the department under RCW 70.94.457(1) or a pellet stove either  
14 certified or issued an exemption by the United States environmental  
15 protection agency in accordance with Title 40, Part 60 of the code of  
16 federal regulations, in the geographical area and for the period of  
17 time that a first stage of impaired air quality has been determined, by  
18 the department or any authority, for that area. A first stage of  
19 impaired air quality is reached when forecasted meteorological  
20 conditions are predicted to cause fine particulate levels to reach or  
21 exceed (~~((thirty-five))~~) thirty micrograms per cubic meter, measured on  
22 a twenty-four hour average, within (~~((forty-eight))~~) seventy-two hours;  
23 and

24 (c)(i) Not burn wood in any solid fuel burning device in a  
25 geographical area and for the period of time that a second stage of  
26 impaired air quality has been determined by the department or any  
27 authority, for that area. A second stage of impaired air quality is  
28 reached when a first stage of impaired air quality has been in force  
29 and has not been sufficient to reduce the increasing fine particulate  
30 pollution trend, fine particulates are at an ambient level of twenty-

1 five micrograms per cubic meter measured on a twenty-four hour average,  
2 and forecasted meteorological conditions are not expected to allow  
3 levels of fine particulates to decline below twenty-five micrograms per  
4 cubic meter for a period of twenty-four hours or more from the time  
5 that the fine particulates are measured at the trigger level.

6 (ii) A second stage burn ban may be called without calling a first  
7 stage burn ban only when all of the following occur and shall require  
8 the department or the local air pollution control authority calling a  
9 second stage burn ban under this subsection to comply with the  
10 requirements of subsection ~~((4))~~ (3) of this section:

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

13 (B) Meteorological conditions have caused fine particulate levels  
14 to rise rapidly;

15 (C) Meteorological conditions are predicted to cause fine  
16 particulate levels to reach or exceed the ~~((thirty-five))~~ thirty  
17 micrograms per cubic meter, measured on a twenty-four hour average,  
18 within twenty-four hours; and

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

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

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

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

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

34 (c) Any changes the department or authority is making to its  
35 procedures of calling first stage and second stage burn bans to avoid  
36 calling a second stage burn ban without first calling a first stage  
37 burn ban.

1 After consulting with affected parties, the department shall  
2 prescribe the format of such a report and may also require additional  
3 information be included in the report. All reports shall be sent to  
4 the department and the department shall keep the reports on file for  
5 not less than five years and available for public inspection and  
6 copying in accordance with RCW 42.56.090.

7 ~~((4) The department and local air pollution control authorities  
8 shall evaluate the effectiveness of the burn ban programs contained in  
9 this section in avoiding fine particulate levels to exceed thirty five  
10 micrograms per cubic meter, measured on a twenty four hour average, and  
11 provide a joint report of the results to the legislature by September  
12 1, 2011.))~~

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

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

- 18 (a) Garbage;
- 19 (b) Treated wood;
- 20 (c) Plastics;
- 21 (d) Rubber products;
- 22 (e) Animals;
- 23 (f) Asphaltic products;
- 24 (g) Waste petroleum products;
- 25 (h) Paints; or

26 (i) Any substance, other than properly seasoned fuel wood, which  
27 normally emits dense smoke or obnoxious odors.

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

33 (a) Fireplaces as defined in RCW 70.94.453(3), except if needed to  
34 meet federal requirements as a contingency measure in a state  
35 implementation plan for a fine particulate nonattainment area;

36 (b) Woodstoves meeting the standards set forth in RCW  
37 70.94.473(1)(b); or

1 (c) Pellet stoves.

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

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

8 (b) Make written findings that:

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

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

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

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

26 (5) When a local air pollution control authority or the department  
27 prohibits the use of solid fuel burning devices as authorized by this  
28 section, the cities, counties, and jurisdictional health departments  
29 serving the area shall cooperate with the department or local air  
30 pollution control authority as the department or the local air  
31 pollution control authority implements the prohibition. ~~((However,~~  
32 ~~cooperation shall not include enforcement of this prohibition.))~~ The  
33 responsibility for actual enforcement of the prohibition shall reside  
34 solely with the department or the local air pollution control  
35 authority. A city, county, or jurisdictional health department serving  
36 the area may agree to assist with 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 a  
2 residence or commercial establishment that does not have an adequate  
3 source of heat without burning wood.

4 (7) As used in this section((7)):

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

7 (b) "Prohibit the use" or "prohibition" may include requiring  
8 disclosure, removal, rendering inoperable, providing evidence of  
9 destruction, or other similar requirements as may be approved by rule  
10 by a local air pollution control authority or the department. However,  
11 except as provided in RCW 64.06.020 relating to the seller disclosure  
12 of wood burning appliances, any such prohibition may not include  
13 imposing separate time of sale obligations on the seller or buyer of  
14 real estate as part of a real estate transaction.

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

17 (1) The department of ecology and local air pollution control  
18 authorities shall report back to the appropriate standing committees of  
19 the legislature by December 31, 2014, and every two years thereafter,  
20 on progress toward achieving attainment for areas of nonattainment that  
21 the revised burn ban and prohibition requirements contained in RCW  
22 70.94.473 and 70.94.477 were enacted to address, as well as whether  
23 other implementation tools are necessary to achieve attainment.

24 (2) This section expires January 1, 2019."

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25 On page 1, beginning on line 2 of the title, after "devices;"  
26 strike the remainder of the title and insert "amending RCW 70.94.473  
27 and 70.94.477; adding a new section to chapter 70.94 RCW; and providing  
28 an expiration date."

EFFECT: Amends the definition of "prohibit the use" or "prohibition" so that rules adopted by a local air pollution control authority or the department of ecology cannot impose obligations on the buyers or sellers of real estate relating to wood burning appliances, except as provided in the residential seller disclosure law, RCW 64.06.020. Removes the criteria for seasoned wood as having a moisture content of less than twenty percent.

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