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SENATE BILL 5432

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Regala, Chase, Fraser, Rockefeller, and Nelson; by request of Department of Ecology

Read first time 01/25/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to reducing pollution from wood stoves; amending  
2 RCW 70.94.473; adding new sections to chapter 70.94 RCW; and  
3 prescribing penalties.

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

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

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

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

12 (b) Not burn wood in any solid fuel burning device except those  
13 which are either Oregon department of environmental quality phase II or  
14 United States environmental protection agency certified or certified by  
15 the department under RCW 70.94.457(1) or a pellet stove either  
16 certified or issued an exemption by the United States environmental  
17 protection agency in accordance with Title 40, Part 60 of the code of  
18 federal regulations, in the geographical area and for the period of  
19 time that a first stage of impaired air quality has been determined, by

1 the department or any authority, for that area. A first stage of  
2 impaired air quality is reached when forecasted meteorological  
3 conditions are predicted to cause fine particulate levels to exceed  
4 thirty-five micrograms per cubic meter, measured on a twenty-four hour  
5 average, within forty-eight hours; and

6 (c)(i) Within areas of nonattainment or maintenance status for fine  
7 particulates in accordance with section 172 of the federal clean air  
8 act (42 U.S.C. Sec. 7502), not burn wood in any solid fuel burning  
9 device in a geographical area and for the period of time that a second  
10 stage of impaired air quality has been determined by the department or  
11 any authority, for that area. A second stage of impaired air quality  
12 within a nonattainment or maintenance area for fine particulate matter  
13 is reached when a first stage of impaired air quality has been in force  
14 and has not been sufficient to reduce the increasing fine particulate  
15 pollution trend, fine particulates are at an ambient level of (~~twenty-~~  
16 five)) twenty micrograms per cubic meter measured on a twenty-four hour  
17 average, and forecasted meteorological conditions are not expected to  
18 allow levels of fine particulates to decline below (~~twenty-five~~)  
19 twenty micrograms per cubic meter for a period of twenty-four hours or  
20 more from the time that the fine particulates are measured at the  
21 trigger level.

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

34 (iii) A second stage burn ban may be called without calling a first  
35 stage burn ban only when all of the following occur and shall require  
36 the department or the local air pollution control authority calling a  
37 second stage burn ban under this subsection to comply with the  
38 requirements of subsection (~~(4)~~) (3) of this section:

1 (A) Fine particulate levels have reached or exceeded (~~(twenty-five~~  
2 ~~micrograms per cubic meter, measured on a twenty-four hour average))~~  
3 the trigger levels defined in (c)(i) or (ii) of this subsection;

4 (B) Meteorological conditions have caused fine particulate levels  
5 to rise rapidly;

6 (C) Meteorological conditions are predicted to cause fine  
7 particulate levels to exceed (~~(the))~~ thirty-five micrograms per cubic  
8 meter, measured on a twenty-four hour average, within twenty-four  
9 hours; and

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

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

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

21 (a) The meteorological conditions that resulted in (~~(their))~~  
22 calling the second stage burn ban;

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

25 (c) Any changes the department or authority is making to its  
26 procedures of calling first stage and second stage burn bans to avoid  
27 calling a second stage burn ban without first calling a first stage  
28 burn ban.

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

35 (4) The department and local air pollution control authorities  
36 shall evaluate the effectiveness of the burn ban program(~~(s))~~ contained  
37 in this section in avoiding fine particulate levels to exceed thirty-

1 five micrograms per cubic meter, measured on a twenty-four hour  
2 average, and provide a joint report of the results to the legislature  
3 by September 1, 2011.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94 RCW  
5 to read as follows:

6 (1) All used solid fuel burning devices in or on any portion of  
7 real property sold with a residential structure in the state must be  
8 removed and destroyed, and to the extent practical materials recycled,  
9 upon sale of the residential structure unless the solid fuel burning  
10 device is United States environmental protection agency certified or  
11 certified by the department under RCW 70.94.457(1) or a pellet stove  
12 either certified or issued an exemption by the United States  
13 environmental protection agency in accordance with 40 C.F.R. Part 60  
14 (2009).

15 (2) This section does not apply to:

16 (a) Wood cook stoves; or

17 (b) Fireplaces as defined in RCW 70.94.453.

18 (3) The removal and destruction of a used solid fuel burning device  
19 under this section is the responsibility of the seller of the  
20 residential structure, unless the seller and buyer agree in writing  
21 that it is the buyer's responsibility. If the seller retains  
22 responsibility, the seller shall remove and destroy the device prior to  
23 the closing date of the sale of the residential structure. If the  
24 buyer accepts responsibility, the buyer shall remove and destroy the  
25 device within thirty days after the closing date of the sale of the  
26 residential structure.

27 (4) The person responsible for removal and destruction of a used  
28 solid fuel burning device under this section shall provide to the  
29 department or local air authority written confirmation of the removal  
30 and destruction of the solid fuel burning device.

31 (5) The failure of a seller or buyer of a residential structure to  
32 comply with this section does not invalidate an instrument of  
33 conveyance executed in the sale.

34 (6) A person who is responsible for the removal of a solid fuel  
35 burning device under subsection (1) of this section and who fails to do  
36 so is subject to the penalties and enforcement actions under this  
37 chapter.

1           (7) The requirements of this section do not apply to home sellers  
2 whose household income is less than one hundred twenty-five percent of  
3 the poverty guideline established by the United States department of  
4 health and human services.

5           NEW SECTION.   **Sec. 3.** A new section is added to chapter 70.94 RCW  
6 to read as follows:

7           To achieve and maintain compliance with federal air quality  
8 standards in areas of nonattainment for fine particulates in accordance  
9 with section 172 of the federal clean air act (42 U.S.C. Sec. 7502), a  
10 subdivision of government with jurisdiction in a nonattainment area may  
11 require installation of an adequate source of heat other than solid  
12 fuel burning devices upon the sale of a residential structure within an  
13 area designated nonattainment for particulate matter two and one-half  
14 microns or smaller by the United States environmental protection  
15 agency, or an area in maintenance status under such a designation.

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