

2SHB 1784 - S COMM AMD  
By Committee on Ways & Means

ADOPTED 04/16/2019

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

3 "Sec. 1. RCW 76.06.200 and 2017 c 95 s 1 are each amended to  
4 read as follows:

5 (1) The department must establish a forest health assessment and  
6 treatment framework designed to proactively and systematically  
7 address the forest health issues facing the state. Specifically, the  
8 framework must endeavor to achieve an initial goal of assessing and  
9 treating one million acres of land by 2033.

10 (2) The department must utilize the framework to assess and treat  
11 acreage in an incremental fashion each biennium. The framework  
12 consists of three elements: Assessment; treatment; and progress  
13 review and reporting.

14 (a) Assessment. Each biennium, the department must identify and  
15 assess two hundred thousand acres of fire prone lands and communities  
16 that are in need of forest health treatment, including the use of  
17 prescribed fire or mechanical treatment, such as thinning.

18 (i) The scope of the assessment must include lands protected by  
19 the department as well as lands outside of the department's fire  
20 protection responsibilities that could pose a high risk to department  
21 protected lands during a fire.

22 (ii) The assessment must identify areas in need of treatment, the  
23 type or types of treatment recommended, data and planning needs to  
24 carry out recommended treatment, and the estimated cost of  
25 recommended treatment.

26 (b) Treatment. Each biennium, the department must review  
27 previously completed assessments and prioritize and conduct as many  
28 identified treatments as possible using appropriations provided for  
29 that specific purpose.

1 (c) Progress review and reporting. By December 1st of each even-  
2 numbered year, the department must provide the appropriate committees  
3 of the legislature and the office of financial management with:

4 (i) A request for appropriations designed to implement the  
5 framework in the following biennium, including assessment work and  
6 conducting treatments identified in previously completed assessments;

7 (ii) A prioritized list and brief summary of treatments planned  
8 to be conducted under the framework with the requested  
9 appropriations, including relevant information from the assessment;  
10 and

11 (iii) A list and brief summary of treatments carried out under  
12 the framework in the preceding biennium, including total funding  
13 available, costs for completed treatment, and treatment outcomes. The  
14 summary must include any barriers to framework implementation and  
15 legislative or administrative recommendations to address those  
16 barriers.

17 (3) In developing and implementing the framework, the department  
18 must:

19 (a) Utilize and build on the forest health strategic planning  
20 initiated under section 308(11), chapter 36, Laws of 2016 sp. sess.,  
21 to the maximum extent practicable, to promote the efficient use of  
22 resources; (~~and~~)

23 (b) Prioritize, to the maximum extent practicable consistent with  
24 this section, forest health treatments that are strategically planned  
25 to serve the dual benefits of forest health maximization while  
26 providing geographically planned tools for wildfire response; and

27 (c) Establish a forest health advisory committee to assist in  
28 developing and implementing the framework. The committee may: (i)  
29 Include representation from large and small forest landowners,  
30 wildland fire response organizations, milling and log transportation  
31 industries, forest collaboratives that may exist in the affected  
32 areas, highly affected communities and community preparedness  
33 organizations, conservation groups, and other interested parties  
34 deemed appropriate by the commissioner; and (ii) consult with  
35 relevant local, state, and federal agencies, and tribes.

36 (4) In implementing subsection (3)(b) of this section, the  
37 department shall attempt to locate and design forest health  
38 treatments in such a way as to provide wildfire response personnel  
39 with strategically located treated areas to assist with managing fire  
40 response. These areas must attempt to maximize the firefighting

1 benefits of natural and artificial geographic features and be located  
2 in areas that prioritize the protection of commercially managed lands  
3 from fires originating on public land.

4 (5) The department must establish and implement the forest health  
5 assessment and treatment framework within the appropriations  
6 specifically provided for this purpose.

7 **Sec. 2.** RCW 76.04.015 and 2016 c 109 s 1 are each amended to  
8 read as follows:

9 (1) The department may, at its discretion, appoint trained  
10 personnel possessing the necessary qualifications to carry out the  
11 duties and supporting functions of the department and may determine  
12 their respective salaries.

13 (2) The department shall have direct charge of and supervision of  
14 all matters pertaining to the forest fire service of the state.

15 (3) The department shall:

16 (a) Enforce all laws within this chapter;

17 (b) Be empowered to take charge of and, consistent with RCW  
18 76.04.021, direct the work of suppressing forest fires;

19 (c) (i) Investigate the origin and cause of all forest fires to  
20 determine whether either a criminal act or negligence by any person,  
21 firm, or corporation caused the starting, spreading, or existence of  
22 the fire. In conducting investigations, the department shall work  
23 cooperatively, to the extent possible, with utilities, property  
24 owners, and other interested parties to identify and preserve  
25 evidence. Except as provided otherwise in this subsection, the  
26 department in conducting investigations is authorized, without court  
27 order, to take possession or control of relevant evidence found in  
28 plain view and belonging to any person, firm, or corporation. To the  
29 extent possible, the department shall notify the person, firm, or  
30 corporation of its intent to take possession or control of the  
31 evidence. The person, firm, or corporation shall be afforded  
32 reasonable opportunity to view the evidence and, before the  
33 department takes possession or control of the evidence, also shall be  
34 afforded reasonable opportunity to examine, document, and photograph  
35 it. If the person, firm, or corporation objects in writing to the  
36 department's taking possession or control of the evidence, the  
37 department must either return the evidence within seven days after  
38 the day on which the department is provided with the written

1 objections or obtain a court order authorizing the continued  
2 possession or control.

3 (ii) Absent a court order authorizing otherwise, the department  
4 may not take possession or control of evidence over the objection of  
5 the owner of the evidence if the evidence is used by the owner in  
6 conducting a business or in providing an electric utility service and  
7 the department's taking possession or control of the evidence would  
8 substantially and materially interfere with the operation of the  
9 business or provision of electric utility service.

10 (iii) Absent a court order authorizing otherwise, the department  
11 may not take possession or control of evidence over the objection of  
12 an electric utility when the evidence is not owned by the utility but  
13 has caused damage to property owned by the utility. However, this  
14 subsection (3)(c)(iii) does not apply if the department has notified  
15 the utility of its intent to take possession or control of the  
16 evidence and provided the utility with reasonable time to examine,  
17 document, and photograph the evidence.

18 (iv) Only personnel qualified to work on electrical equipment may  
19 take possession or control of evidence owned or controlled by an  
20 electric utility;

21 (d) Furnish notices or information to the public calling  
22 attention to forest fire dangers and the penalties for violation of  
23 this chapter;

24 (e) Be familiar with all timbered and cut-over areas of the  
25 state, areas where forest health treatments were undertaken on state,  
26 federal, or private land, public general transportation roads and  
27 public and private logging roads, water bodies, and other features on  
28 the landscape relevant in planning a fire response and include those  
29 features on a geographic information system for use by fire response  
30 personnel to assist in response decision making;

31 (f) Maximize the effective utilization of local fire suppression  
32 assets consistent with RCW 76.04.181; and

33 (g) Regulate and control the official actions of its employees,  
34 the wardens, and the rangers.

35 (4) The department may:

36 (a) Authorize all needful and proper expenditures for forest  
37 protection;

38 (b) Adopt rules consistent with this section for the prevention,  
39 control, and suppression of forest fires as it considers necessary  
40 including but not limited to: Fire equipment and materials; use of

1 personnel; and fire prevention standards and operating conditions  
2 including a provision for reducing these conditions where justified  
3 by local factors such as location and weather;

4 (c) Remove at will the commission of any ranger or suspend the  
5 authority of any warden;

6 (d) Inquire into:

7 (i) The extent, kind, value, and condition of all timberlands  
8 within the state;

9 (ii) The extent to which timberlands are being destroyed by fire  
10 and the damage thereon;

11 (e) Provide fire detection, prevention, presuppression, or  
12 suppression services on nonforested public lands managed by the  
13 department or another state agency, but only to the extent that  
14 providing these services does not interfere with or detract from the  
15 obligations set forth in subsection (3) of this section. If the  
16 department provides fire detection, prevention, presuppression, or  
17 suppression services on nonforested public lands managed by another  
18 state agency, the department must be fully reimbursed for the work  
19 through a cooperative agreement as provided for in RCW 76.04.135(1).

20 (5) Any rules adopted under this section for the suppression of  
21 forest fires must include a mechanism by which a local fire  
22 mobilization radio frequency, consistent with RCW 43.43.963, is  
23 identified and made available during the initial response to any  
24 forest fire that crosses jurisdictional lines so that all responders  
25 have access to communications during the response. Different initial  
26 response frequencies may be identified and used as appropriate in  
27 different geographic response areas. If the fire radio communication  
28 needs escalate beyond the capability of the identified local radio  
29 frequency, the use of other available designated interoperability  
30 radio frequencies may be used.

31 (6) When the department considers it to be in the best interest  
32 of the state, it may cooperate with any agency of another state, the  
33 United States or any agency thereof, the Dominion of Canada or any  
34 agency or province thereof, and any county, town, corporation,  
35 individual, or Indian tribe within the state of Washington in forest  
36 firefighting and patrol.

37 **Sec. 3.** RCW 70.94.6514 and 2009 c 118 s 103 are each amended to  
38 read as follows:

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

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

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

13 (2) Notwithstanding any other provision of this section, outdoor  
14 burning may be allowed for the exclusive purpose of managing storm or  
15 flood-related debris. The decision to allow burning shall be made by  
16 the entity with permitting jurisdiction as determined under RCW  
17 70.94.6534 or 70.94.6518. If outdoor burning is allowed in areas  
18 subject to subsection (1)(a) or (b) of this section, a permit shall  
19 be required, and a fee may be collected to cover the expenses of  
20 administering and enforcing the permit. All conditions and  
21 restrictions pursuant to RCW 70.94.6526(1) and 70.94.6512 apply to  
22 outdoor burning allowed under this section.

23 (3)(a) Outdoor burning that is normal, necessary, and customary  
24 to ongoing agricultural activities, that is consistent with  
25 agricultural burning authorized under RCW 70.94.6528 and 70.94.6532,  
26 is allowed within the urban growth area in accordance with RCW  
27 70.94.6528(8)(a).

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

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

35 (5) Notwithstanding any other provisions of this section, outdoor  
36 burning that reduces the risk of a wildfire, or is normal, necessary,  
37 and customary to ongoing silvicultural activities consistent with  
38 silvicultural burning authorized under RCW 70.94.6534(1), is allowed  
39 within the urban growth area in accordance with RCW 70.94.6534.  
40 Before issuing a burn permit within the urban growth area for any

1 burn that exceeds one hundred tons of material, the department of  
2 natural resources shall consult with department of ecology and  
3 condition the issuance and use of such permits to comply with air  
4 quality standards established by the department of ecology.

5 **Sec. 4.** RCW 70.94.6524 and 2009 c 118 s 301 are each amended to  
6 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

7 (d) Only the following items are burned:

8 (i) Orchard prunings;

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

11 (iii) Organic debris blown by wind.

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

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

21 **Sec. 5.** RCW 70.94.6534 and 2010 1st sp.s. c 7 s 128 are each  
22 amended to read as follows:

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

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

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

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

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

38 (e) Silvicultural burning used to improve or maintain fire  
39 dependent ecosystems for rare plants or animals within state,



1 federal, and private natural area preserves, natural resource  
2 conservation areas, parks, and other wildlife areas.

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

12 (3) Permit fees shall be assessed for wildfire risk reduction and  
13 for silvicultural burning under the jurisdiction of the department of  
14 natural resources and collected by the department of natural  
15 resources as provided for in this section. All fees shall be  
16 deposited in the air pollution control account, created in RCW  
17 70.94.015. The legislature shall appropriate to the department of  
18 natural resources funds from the air pollution control account to  
19 enforce and administer the program under this section and RCW  
20 70.94.6536, 70.94.6538, and 70.94.6540. Fees shall be set by rule by  
21 the department of natural resources at the level necessary to cover  
22 the costs of the program after receiving recommendations on such fees  
23 from the public.

24 **Sec. 6.** RCW 70.94.6536 and 1995 c 143 s 1 are each amended to  
25 read as follows:

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

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

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

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

36 (2) (a) The department of natural resources, within twelve months  
37 after May 15, 1991, shall develop a plan, based upon the existing  
38 smoke management agreement to carry out the programs as described in  
39 this section in the most efficient, cost-effective manner possible.

1 The plan shall be developed in consultation with the department of  
2 ecology, public and private landowners engaged in silvicultural  
3 forest burning, and representatives of the public.

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

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

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

34 (3) If the December 31, 1994, emission reductions targets in this  
35 section are not met, the department of natural resources, in  
36 consultation with the department of ecology, shall use its authority  
37 granted in this chapter and chapter 76.04 RCW to immediately limit  
38 emissions from such burning to the 1994 target levels and limit  
39 silvicultural forest burning in subsequent years to achieve equal  
40 annual incremental reductions so as to achieve the December 31, 2000,

1 target level. If, as a result of the program established in this  
2 section, the emission reductions are met in 1994, but are not met by  
3 December 31, 2000, the department of natural resources in  
4 consultation with the department of ecology shall immediately limit  
5 silvicultural forest burning to reduce emissions from such burning to  
6 the December 31, 2000, target level in all subsequent years.

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

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

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

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

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

36 **Sec. 7.** RCW 70.94.6538 and 2009 c 118 s 502 are each amended to  
37 read as follows:

38 The department of natural resources, in granting burning permits  
39 for fires for the purposes set forth in RCW 70.94.6534, shall

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

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

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

36 NEW SECTION. **Sec. 8.** If specific funding for the purposes of  
37 this act, referencing this act by bill or chapter number, is not  
38 provided by June 30, 2019, in the omnibus appropriations act, this  
39 act is null and void."

**ADOPTED 04/16/2019**

1       On page 1, line 1 of the title, after "prevention;" strike the  
2 remainder of the title and insert "amending RCW 76.06.200, 76.04.015,  
3 70.94.6514, 70.94.6524, 70.94.6534, 70.94.6536, and 70.94.6538; and  
4 creating a new section."

EFFECT: Authorizes the Department of Natural Resources to issue permits for outdoor burning that reduces the risk of wildfire or that is consistent with silvicultural burning within the urban growth area. Authorizes the Department of Natural Resources to enter into cooperative agreements with local fire protection agencies to issue permits for reducing wildfire risk in urban growth areas.

--- END ---