
SENATE BILL 5279

State of Washington

66th Legislature

2019 Regular Session

By Senators Van De Wege, Warnick, and Short

Read first time 01/16/19. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to regulating outdoor burning for the protection
2 of life or property and for public health, safety, and welfare; and
3 amending RCW 70.94.6514, 70.94.6534, 70.94.6524, 70.94.6536,
4 70.94.6538, and 70.94.6548.

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

6 **Sec. 1.** RCW 70.94.6514 and 2009 c 118 s 103 are each amended to
7 read as follows:

8 (1) Except as otherwise specified in this chapter for the
9 protection of life or property, and for the public health, safety,
10 and welfare, and consistent with the policy of the state to reduce
11 outdoor burning to the greatest extent practical, outdoor burning
12 shall not be allowed in:

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

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

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

12 (3)(a) Outdoor burning that is normal, necessary, and customary
13 to ongoing agricultural activities, that is consistent with
14 agricultural burning authorized under RCW 70.94.6528 and 70.94.6532,
15 is allowed within the urban growth area in accordance with RCW
16 70.94.6528(8)(a).

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

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

24 **Sec. 2.** RCW 70.94.6534 and 2010 1st sp.s. c 7 s 128 are each
25 amended to read as follows:

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

31 (a) Abating a forest fire hazard;

32 (b) Prevention of a fire hazard;

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

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

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

5 (2) The department of natural resources shall not retain such
6 authority, but it shall be the responsibility of the appropriate fire
7 protection agency for permitting and regulating outdoor burning on
8 lands where the department of natural resources does not have fire
9 protection responsibility.

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

21 **Sec. 3.** RCW 70.94.6524 and 2009 c 118 s 301 are each amended to
22 read as follows:

23 (1) It shall be the responsibility and duty of the department of
24 natural resources, department of ecology, department of agriculture,
25 fire districts, and local air pollution control authorities to
26 establish, through regulations, ordinances, or policy, a limited
27 burning permit program.

28 (2) Except as otherwise specified in this chapter for the
29 protection of life or property, and for the public health, safety,
30 and welfare, the permit program shall apply to residential and land
31 clearing burning in the following areas:

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

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

36 (3) Except as otherwise specified in this chapter for the
37 protection of life or property, and for the public health, safety,
38 and welfare, the permit program shall apply only to land clearing

1 burning in the nonurban areas of any county with an unincorporated
2 population of less than fifty thousand.

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

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

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

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

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

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

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

27 (d) Only the following items are burned:

28 (i) Orchard prunings;

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

31 (iii) Organic debris blown by wind.

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

35 (9) The department of natural resources shall develop policies
36 that allow outdoor burning for the protection of life or property,
37 and for the public health, safety, and welfare.

38 (10) Nothing in this section shall require fire districts to
39 enforce air quality requirements related to outdoor burning, unless
40 the fire district enters into an agreement with the department of

1 ecology, department of natural resources, a local air pollution
2 control authority, or other appropriate entity to provide such
3 enforcement.

4 **Sec. 4.** RCW 70.94.6536 and 1995 c 143 s 1 are each amended to
5 read as follows:

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

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

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

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

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

23 (b) The plan shall recognize the variations in silvicultural
24 forest burning including, but not limited to, a landowner's
25 responsibility to abate an extreme fire hazard under chapter 76.04
26 RCW and other objectives of burning, including abating and preventing
27 a fire hazard, geographic region, climate, elevation and slope,
28 proximity to populated areas, ~~((and))~~ diversity of land ownership,
29 improving forest health and resiliency, restoring forest ecosystem
30 functions, allowing for natural vegetation, and reducing fuel loads
31 to address public safety and protect property from wildfire. The plan
32 shall establish priorities that the department of natural resources
33 shall use to allocate allowable emissions, including but not limited
34 to, public health and safety, protection of life or property, forest
35 health and resiliency, silvicultural burning used to improve or
36 maintain fire dependent ecosystems for rare plants or animals within
37 state, federal, and private natural area preserves, natural resource
38 conservation areas, parks, and other wildlife areas. The plan shall

1 also recognize the real costs of the emissions program and recommend
2 equitable fees to cover the costs of the program.

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

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

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

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

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

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

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

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

19 **Sec. 5.** RCW 70.94.6538 and 2009 c 118 s 502 are each amended to
20 read as follows:

21 Except as otherwise specified in this chapter for the protection
22 of life or property, and for the public health, safety, and welfare,
23 the department of natural resources in granting burning permits for
24 fires for the purposes set forth in RCW 70.94.6534 shall condition
25 the issuance and use of such permits to comply with air quality
26 standards established by the department of ecology after full
27 consultation with the department of natural resources. Such burning
28 shall not cause the state air quality standards to be exceeded in the
29 ambient air up to two thousand feet above ground level over critical
30 areas designated by the department of ecology, otherwise subject to
31 air pollution from other sources. Air quality standards shall be
32 established and published by the department of ecology which shall
33 also establish a procedure for advising the department of natural
34 resources when and where air contaminant levels exceed or threaten to
35 exceed the ambient air standards over such critical areas. The air
36 quality shall be quantitatively measured by the department of ecology
37 or the appropriate local air pollution control authority at
38 established monitoring stations over such designated areas. Further,
39 such permitted burning shall not cause damage to public health or the

1 environment. All permits issued under this section shall be subject
2 to all applicable fees, permitting, penalty, and enforcement
3 provisions of this chapter. The department of natural resources shall
4 set forth smoke dispersal objectives designed consistent with this
5 section to minimize any air pollution from such burning and the
6 procedures necessary to meet those objectives.

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

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

20 **Sec. 6.** RCW 70.94.6548 and 2009 c 118 s 701 are each amended to
21 read as follows:

22 Consistent with RCW 70.94.6514, outdoor burning may be allowed
23 anywhere in the state for the exclusive purpose of managing storm or
24 flood-related debris, for the protection of life or property, and for
25 the public health, safety, and welfare.

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