
ENGROSSED SUBSTITUTE SENATE BILL 5279

State of Washington

66th Legislature

2019 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Warnick, and Short)

READ FIRST TIME 02/22/19.

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, 70.94.6524, 70.94.6534, 70.94.6536, and
4 70.94.6538.

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) Consistent with the policy of the state to reduce outdoor
9 burning to the greatest extent practical, outdoor burning shall not
10 be allowed in:

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

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

20 (2) Notwithstanding any other provision of this section, outdoor
21 burning may be allowed for the exclusive purpose of managing storm or

1 flood-related debris. The decision to allow burning shall be made by
2 the entity with permitting jurisdiction as determined under RCW
3 70.94.6534 or 70.94.6518. If outdoor burning is allowed in areas
4 subject to subsection (1)(a) or (b) of this section, a permit shall
5 be required, and a fee may be collected to cover the expenses of
6 administering and enforcing the permit. All conditions and
7 restrictions pursuant to RCW 70.94.6526(1) and 70.94.6512 apply to
8 outdoor burning allowed under this section.

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

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

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

21 (5) Notwithstanding any other provisions of this section, outdoor
22 burning that reduces the risk of a wildfire, or is normal, necessary,
23 and customary to ongoing silvicultural activities consistent with
24 silvicultural burning authorized under RCW 70.94.6534(1), is allowed
25 within the urban growth area in accordance with RCW 70.94.6534.
26 Before issuing a burn permit within the urban growth area for any
27 burn that exceeds one hundred tons of material, the department of
28 natural resources shall consult with department of ecology and
29 condition the issuance and use of such permits to comply with air
30 quality standards established by the department of ecology.

31 **Sec. 2.** RCW 70.94.6524 and 2009 c 118 s 301 are each amended to
32 read as follows:

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

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

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

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

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

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

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

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

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

26 (a) The burning is incidental to commercial agricultural
27 activities;

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

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

32 (d) Only the following items are burned:

33 (i) Orchard prunings;

34 (ii) Organic debris along fence lines or irrigation or drainage
35 ditches; or

36 (iii) Organic debris blown by wind.

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

1 (9) Nothing in this section shall require fire districts to
2 enforce air quality requirements related to outdoor burning, unless
3 the fire district enters into an agreement with the department of
4 ecology, department of natural resources, a local air pollution
5 control authority, or other appropriate entity to provide such
6 enforcement.

7 **Sec. 3.** RCW 70.94.6534 and 2010 1st sp.s. c 7 s 128 are each
8 amended to read as follows:

9 (1) The department of natural resources (~~shall have the~~
10 ~~responsibility~~) is responsible for issuing and regulating burning
11 permits required by it relating to the following activities for the
12 protection of life or property (~~and/or~~) and for the public health,
13 safety, and welfare:

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

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

17 (c) Instruction of public officials in methods of forest
18 firefighting;

19 (d) Any silvicultural operation to improve the forestlands of the
20 state, including but not limited to forest health and resiliency,
21 decreasing forest insect or disease susceptibility, maintaining or
22 restoring native vegetation, or otherwise enhancing resiliency to
23 fire; and

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

28 (2) The department of natural resources shall not retain such
29 authority, but it shall be the responsibility of the appropriate fire
30 protection agency for permitting and regulating outdoor burning on
31 lands where the department of natural resources does not have fire
32 protection responsibility, except for the issuance of permits for
33 reducing the risk of wildfire under RCW 70.94.6514(5). The department
34 of natural resources may enter into cooperative agreements with local
35 fire protection agencies to issue permits for reducing wildfire risk
36 under RCW 70.94.6514(5).

37 (3) Permit fees shall be assessed for wildfire risk reduction and
38 for silvicultural burning under the jurisdiction of the department of
39 natural resources and collected by the department of natural

1 resources as provided for in this section. All fees shall be
2 deposited in the air pollution control account, created in RCW
3 70.94.015. The legislature shall appropriate to the department of
4 natural resources funds from the air pollution control account to
5 enforce and administer the program under this section and RCW
6 70.94.6536, 70.94.6538, and 70.94.6540. Fees shall be set by rule by
7 the department of natural resources at the level necessary to cover
8 the costs of the program after receiving recommendations on such fees
9 from the public.

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

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

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

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

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

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

29 (b) The plan shall recognize the variations in silvicultural
30 forest burning including, but not limited to, a landowner's
31 responsibility to abate an extreme fire hazard under chapter 76.04
32 RCW and other objectives of burning, including abating and preventing
33 a fire hazard, geographic region, climate, elevation and slope,
34 proximity to populated areas, ~~((and))~~ diversity of land ownership,
35 improving forest health and resiliency, decreasing forest insect or
36 disease susceptibility, maintaining or restoring native vegetation,
37 or otherwise enhancing resiliency to fire. The plan shall establish
38 priorities that the department of natural resources shall use to
39 allocate allowable emissions, including but not limited to, forest

1 health and resiliency, silvicultural burning used to improve or
2 maintain fire dependent ecosystems for rare plants or animals within
3 state, federal, and private natural area preserves, natural resource
4 conservation areas, parks, and other wildlife areas. The plan shall
5 also recognize the real costs of the emissions program and recommend
6 equitable fees to cover the costs of the program.

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

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

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

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

38 (a) The landowner submits a written request to the department
39 identifying the location of the proposed burning and the nature of
40 the forest health problem to be corrected. The request shall include

1 a brief description of alternatives to silvicultural burning and
2 reasons why the landowner believes the alternatives not to be
3 appropriate.

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

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

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

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

24 The department of natural resources, in granting burning permits
25 for fires for the purposes set forth in RCW 70.94.6534, shall
26 condition the issuance and use of such permits to comply to the
27 extent feasible with air quality standards established by the
28 department of ecology (~~(after full consultation with the department~~
29 ~~of natural resources)~~). Such burning shall not cause the state air
30 quality standards to be exceeded in the ambient air up to two
31 thousand feet above ground level over critical areas designated by
32 the department of ecology, otherwise subject to air pollution from
33 other sources. Air quality standards shall be established and
34 published by the department of ecology which shall also establish a
35 procedure for advising the department of natural resources when and
36 where air contaminant levels exceed or threaten to exceed the ambient
37 air standards over such critical areas. The air quality shall be
38 quantitatively measured by the department of ecology or the
39 appropriate local air pollution control authority at established

1 monitoring stations over such designated areas. Further, such
2 permitted burning shall not cause damage to public health or the
3 environment. All permits issued under this section shall be subject
4 to all applicable fees, permitting, penalty, and enforcement
5 provisions of this chapter. The department of natural resources shall
6 set forth smoke dispersal objectives designed consistent with this
7 section to minimize any air pollution from such burning and the
8 procedures necessary to meet those objectives.

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

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

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