

HOUSE BILL REPORT

SHB 1423

As Passed House:

March 1, 2021

Title: An act relating to smoke management civil enforcement.

Brief Description: Concerning smoke management civil enforcement.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Fitzgibbon, Springer and Dent; by request of Department of Natural Resources).

Brief History:

Committee Activity:

Environment & Energy: 2/4/21, 2/11/21 [DPS].

Floor Activity:

Passed House: 3/1/21, 95-2.

Brief Summary of Substitute Bill

- Provides that a civil penalty may be issued to a person who violates the requirement to have a burning permit issued by the Department of Natural Resources (DNR) in order to burn certain classes of material on lands protected by the DNR.
- Requires the DNR to adopt a rule that establishes: (1) a framework for resolving conflicts that may arise related to the burning permit statute, including the issuance of civil penalties; and (2) the method by which penalties related to violations of the burning permit statute will be calculated.
- Requires the DNR to conduct a public process to solicit input on the development of the rule.
- Requires that civil enforcement actions related to violations of the burning permit statute be consistent with the provisions of the burning

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permit statute.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Without recommendation. Signed by 1 member: Representative Goehner.

Staff: Robert Hatfield (786-7117).

Background:

The Department of Natural Resources (DNR) is responsible for issuing and regulating permits for certain burning activities on lands under the DNR's fire protection authority to: (1) abate and prevent fire hazards; (2) facilitate forest firefighting instruction; and (3) enable burning operations to improve fire-dependent ecosystems and otherwise improve the forestlands of the state. In addition, outdoor burning may be allowed for managing storm- or flood-related debris.

Conditions may be imposed in the permit for the protection of life, property, or air quality and the DNR may suspend or revoke the permits when conditions warrant.

The DNR, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary to prevent air pollution.

The Washington Clean Air Act.

The Washington Clean Air Act (Act) regulates outdoor air pollution. The Act defines "air pollution" as the "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property."

Air pollution control regulations address emissions of air contaminants that injure health or unreasonably interfere with enjoyment of life and property. Enforcement authority for the Act is generally handled either by the Department of Ecology or by one of the seven regional clean air agencies within Washington, depending on the county in which the source

is located.

Any person who violates any of the provisions of the Act may incur a civil penalty in an amount not to exceed \$10,000 per day for each violation. Each such violation is a separate and distinct offense, and in case of a continuing violation, each day's continuance is a separate and distinct violation.

Summary of Substitute Bill:

A person who violates the requirement to have a valid written burning permit obtained from the Department of Natural Resources (DNR) to burn any flammable material on any lands under the protection of the DNR or to burn refuse or waste forest material on forestlands protected by the DNR may incur a civil penalty under the Washington Clean Air Act in an amount not to exceed \$10,000 per day for each violation. Each such violation is a separate and distinct offense, and in case of a continuing violation, each day's continuance is a separate and distinct violation.

Civil enforcement actions related to violations of the burning permit statute must be consistent with the provisions of the burning permit statute.

The DNR must adopt a rule that establishes: (1) a framework for resolving conflicts that may arise related to the burning permit statute, including the issuance of civil penalties; and (2) the method by which penalties related to violations of the burning permit statute will be calculated.

The DNR must conduct a public process to solicit input on the development of the rule.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Department of Natural Resources (DNR) has authority to issue permits for silvicultural burning for forest management, and the Department of Ecology (Ecology) is the regulating entity for agricultural burning and general outdoor burning. This bill does not propose to change that. Ecology is working to update the Smoke Management Plan (SMP). The updated SMP will provide greater opportunities for prescribed burning. The plan will make it easier to take advantage of favorable atmospheric conditions, which should result in reduced smoke. Once the DNR finalizes the SMP, Ecology will submit it to the Environmental Protection Agency (EPA) for approval. Until the EPA approves the

SMP, the updates cannot take effect. Until that happens, people or companies that want to burn under the new plan will not be able to. Current law is less clear regarding the DNR's civil authority to enforce the burning permit statute. This bill specifies that violations of burn permits issued by the DNR are within the DNR's civil enforcement authority. This bill will benefit forest health and will improve wildfire response efforts.

The state's current SMP has not been revised since 1998. A lot has changed since then, especially with regard to the risk to communities from wildfires. This bill provides an additional tool to the DNR, with the expectation that the DNR will not need to use it. Until this bill, the DNR was not listed as being able to issue civil penalties for silvicultural burning. The DNR has the authority to issue a criminal penalty for a violation of the burning permit statute, but it is unclear whether the DNR also has civil enforcement authority. The bill would allow for EPA approval of the SMP; the EPA has said that the DNR needs to have civil enforcement authority in order for the SMP to be approved. The majority of people applying for silvicultural burning permits are forestland owners or communities.

(Opposed) None.

(Other) Burning slash piles is a necessary part of the reforestation process. It is important to make sure the bill does what it is intended to do, and only what it is intended to do. The DNR's SMP update process has been very inclusive. Having the State Implementation Plan approved by the EPA is very important. The idea of a penalty matrix is a good idea. It is important to make sure the language solves the actual problem presented. Landowners and the DNR communicate well on the implementation of burning permits, and those good communications should be allowed to continue.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Kathy Taylor, Department of Ecology; and George Geissler, Department of Natural Resources.

(Other) Jason Callahan, Washington Forest Protection Association.

Persons Signed In To Testify But Not Testifying: None.