
SUBSTITUTE SENATE BILL 6121

State of Washington

68th Legislature

2024 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Van De Wege, Nobles, and Randall)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to agricultural and forestry biomass; amending
2 RCW 70A.15.1030, 70A.15.5090, 70A.15.5120, and 70A.15.5140; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the use of
6 distributed, small-scale portable flame cap kilns for silvicultural
7 and agricultural management of natural vegetation is consistent with
8 the sustainable agriculture goals of the climate commitment act under
9 RCW 70A.65.260, the sustainable farms and fields grant program
10 identified in RCW 89.08.615, the use of fire in controlled burns to
11 eliminate sources of fuel identified in RCW 76.04.167(3), and the
12 forest restoration goals identified in RCW 70A.65.270. Therefore, the
13 legislature finds that the use of distributed portable flame cap
14 kilns is a necessary component of an integrated land management
15 strategy that:

- 16 (1) Reduces greenhouse gas emissions;
17 (2) Produces durable biogenic carbon storage, either in situ or
18 for distribution elsewhere; and
19 (3) Minimizes air quality impacts from open burning.

1 **Sec. 2.** RCW 70A.15.1030 and 2020 c 20 s 1081 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Air contaminant" means dust, fumes, mist, smoke, other
6 particulate matter, vapor, gas, odorous substance, or any combination
7 thereof.

8 (2) "Air pollution" is presence in the outdoor atmosphere of one
9 or more air contaminants in sufficient quantities and of such
10 characteristics and duration as is, or is likely to be, injurious to
11 human health, plant or animal life, or property, or which
12 unreasonably interfere with enjoyment of life and property. For the
13 purpose of this chapter, air pollution shall not include air
14 contaminants emitted in compliance with chapter 17.21 RCW.

15 (3) "Air quality standard" means an established concentration,
16 exposure time, and frequency of occurrence of an air contaminant or
17 multiple contaminants in the ambient air which shall not be exceeded.

18 (4) "Ambient air" means the surrounding outside air.

19 (5) "Authority" means any air pollution control agency whose
20 jurisdictional boundaries are coextensive with the boundaries of one
21 or more counties.

22 (6) "Best available control technology" (BACT) means an emission
23 limitation based on the maximum degree of reduction for each air
24 pollutant subject to regulation under this chapter emitted from or
25 that results from any new or modified stationary source, that the
26 permitting authority, on a case-by-case basis, taking into account
27 energy, environmental, and economic impacts and other costs,
28 determines is achievable for such a source or modification through
29 application of production processes and available methods, systems,
30 and techniques, including fuel cleaning, clean fuels, or treatment or
31 innovative fuel combustion techniques for control of each such a
32 pollutant. In no event shall application of "best available control
33 technology" result in emissions of any pollutants that will exceed
34 the emissions allowed by any applicable standard under 40 C.F.R. Part
35 60 and Part 61, as they exist on July 25, 1993, or their later
36 enactments as adopted by reference by the director by rule. Emissions
37 from any source utilizing clean fuels, or any other means, to comply
38 with this subsection shall not be allowed to increase above levels
39 that would have been required under the definition of BACT as it

1 existed prior to enactment of the federal clean air act amendments of
2 1990.

3 (7) "Best available retrofit technology" (BART) means an emission
4 limitation based on the degree of reduction achievable through the
5 application of the best system of continuous emission reduction for
6 each pollutant that is emitted by an existing stationary facility.
7 The emission limitation must be established, on a case-by-case basis,
8 taking into consideration the technology available, the costs of
9 compliance, the energy and nonair quality environmental impacts of
10 compliance, any pollution control equipment in use or in existence at
11 the source, the remaining useful life of the source, and the degree
12 of improvement in visibility that might reasonably be anticipated to
13 result from the use of the technology.

14 (8) "Board" means the board of directors of an authority.

15 (9) "Control officer" means the air pollution control officer of
16 any authority.

17 (10) "Department" or "ecology" means the department of ecology.

18 (11) "Emission" means a release of air contaminants into the
19 ambient air.

20 (12) "Emission standard" and "emission limitation" mean a
21 requirement established under the federal clean air act or this
22 chapter that limits the quantity, rate, or concentration of emissions
23 of air contaminants on a continuous basis, including any requirement
24 relating to the operation or maintenance of a source to assure
25 continuous emission reduction, and any design, equipment, work
26 practice, or operational standard adopted under the federal clean air
27 act or this chapter.

28 (13) "Fine particulate" means particulates with a diameter of two
29 and one-half microns and smaller.

30 (14) (a) "Lowest achievable emission rate" (LAER) means for any
31 source that rate of emissions that reflects:

32 ~~((a))~~ (i) The most stringent emission limitation that is
33 contained in the implementation plan of any state for such class or
34 category of source, unless the owner or operator of the proposed
35 source demonstrates that such limitations are not achievable; or

36 ~~((b))~~ (ii) The most stringent emission limitation that is
37 achieved in practice by such class or category of source, whichever
38 is more stringent.

39 (b) In no event shall the application of this term permit a
40 proposed new or modified source to emit any pollutant in excess of

1 the amount allowable under applicable new source performance
2 standards.

3 (15) "Modification" means any physical change in, or change in
4 the method of operation of, a stationary source that increases the
5 amount of any air contaminant emitted by such source or that results
6 in the emission of any air contaminant not previously emitted. The
7 term modification shall be construed consistent with the definition
8 of modification in Section 7411, Title 42, United States Code, and
9 with rules implementing that section.

10 (16) "Multicounty authority" means an authority which consists of
11 two or more counties.

12 (17) "New source" means (a) the construction or modification of a
13 stationary source that increases the amount of any air contaminant
14 emitted by such source or that results in the emission of any air
15 contaminant not previously emitted, and (b) any other project that
16 constitutes a new source under the federal clean air act.

17 (18) "Permit program source" means a source required to apply for
18 or to maintain an operating permit under RCW 70A.15.2260.

19 (19) "Person" means an individual, firm, public or private
20 corporation, association, partnership, political subdivision of the
21 state, municipality, or governmental agency.

22 (20) "Reasonably available control technology" (RACT) means the
23 lowest emission limit that a particular source or source category is
24 capable of meeting by the application of control technology that is
25 reasonably available considering technological and economic
26 feasibility. RACT is determined on a case-by-case basis for an
27 individual source or source category taking into account the impact
28 of the source upon air quality, the availability of additional
29 controls, the emission reduction to be achieved by additional
30 controls, the impact of additional controls on air quality, and the
31 capital and operating costs of the additional controls. RACT
32 requirements for a source or source category shall be adopted only
33 after notice and opportunity for comment are afforded.

34 (21) "Silvicultural burning" means burning of wood fiber on
35 forestland or combustion of natural vegetation from silvicultural
36 activities consistent with the provisions of RCW 70A.15.5120.

37 (22) "Source" means all of the emissions units including
38 quantifiable fugitive emissions, that are located on one or more
39 contiguous or adjacent properties, and are under the control of the
40 same person, or persons under common control, whose activities are

1 ancillary to the production of a single product or functionally
2 related group of products.

3 (23) "Stationary source" means any building, structure, facility,
4 or installation that emits or may emit any air contaminant.

5 (24) "Trigger level" means the ambient level of fine
6 particulates, measured in micrograms per cubic meter, that must be
7 detected prior to initiating a first or second stage of impaired air
8 quality under RCW 70A.15.3580.

9 (25) "Flame cap kiln" means an outdoor container used for the
10 combustion of natural vegetation from silvicultural or agricultural
11 activities that meets the following requirements:

12 (a) Has a solid or sealed bottom including, but not limited to,
13 mineral soils, so that all air for combustion comes from above;

14 (b) Is completely open on top with no restrictions;

15 (c) Is a shallow container where the width is greater than the
16 height; and

17 (d) Has a volume of 10 cubic meters or less.

18 **Sec. 3.** RCW 70A.15.5090 and 2020 c 20 s 1140 are each amended to
19 read as follows:

20 (1) Any person who proposes to set fires in the course of
21 agricultural activities shall obtain a permit from an air pollution
22 control authority, the department of ecology, or a local entity
23 delegated permitting authority under RCW 70A.15.5100. General permit
24 criteria of statewide applicability shall be established by the
25 department, by rule, after consultation with the various air
26 pollution control authorities. For the purposes of this section,
27 agricultural burning includes the combustion of natural vegetation
28 from agricultural activities in portable flame cap kilns, provided
29 that the biomass does not contain any prohibited materials as defined
30 in RCW 70A.15.5010(1).

31 (a) Permits shall be issued under this section based on seasonal
32 operations or by individual operations, or both.

33 (b) Incidental agricultural burning consistent with provisions
34 established in RCW 70A.15.5070 is allowed without applying for any
35 permit and without the payment of any fee.

36 (2) The department of ecology, local air authorities, or a local
37 entity with delegated permit authority shall:

1 (a) Condition all permits to ensure that the public interest in
2 air, water, and land pollution and safety to life and property is
3 fully considered;

4 (b) Condition all burning permits to minimize air pollution
5 insofar as practical;

6 (c) Act upon, within seven days from the date an application is
7 filed under this section, an application for a permit to set fires in
8 the course of agricultural burning for controlling diseases, insects,
9 weed abatement, or development of physiological conditions conducive
10 to increased crop yield;

11 (d) Provide convenient methods for issuance and oversight of
12 agricultural burning permits; and

13 (e) Work, through agreement, with counties and cities to provide
14 convenient methods for granting permission for agricultural burning,
15 including telephone, facsimile transmission, issuance from local city
16 or county offices, or other methods.

17 (3) A local air authority administering the permit program under
18 subsection (2) of this section shall not limit the number of days of
19 allowable agricultural burning, but may consider the time of year,
20 meteorological conditions, and other criteria specified in rules
21 adopted by the department to implement subsection (2) of this
22 section.

23 (4) In addition to following any other requirements established
24 by the department to protect air quality pursuant to other laws,
25 applicants for permits must show that the setting of fires as
26 requested is the most reasonable procedure to follow in safeguarding
27 life or property under all circumstances or is otherwise reasonably
28 necessary to successfully carry out the enterprise in which the
29 applicant is engaged, or both. Nothing in this section relieves the
30 applicant from obtaining permits, licenses, or other approvals
31 required by any other law.

32 (5) The department of ecology, the appropriate local air
33 authority, or a local entity with delegated permitting authority
34 pursuant to RCW 70A.15.5100 at the time the permit is issued shall
35 assess and collect permit fees for burning under this section. All
36 fees collected shall be deposited in the air pollution control
37 account created in RCW 70A.15.1010, except for that portion of the
38 fee necessary to cover local costs of administering a permit issued
39 under this section. Fees shall be set by rule by the permitting
40 agency at the level determined by the task force created by

1 subsection (6) of this section, but fees for field burning shall not
2 exceed (~~three dollars and seventy-five cents~~) \$3.75 per acre to be
3 burned(~~(7)~~) or, in the case of pile burning, shall not exceed (~~one~~
4 ~~dollar~~) \$1.00 per ton of material burned.

5 (6) An agricultural burning practices and research task force
6 shall be established under the direction of the department. The task
7 force shall be composed of a representative from the department who
8 shall serve as chair; one representative of eastern Washington local
9 air authorities; three representatives of the agricultural community
10 from different agricultural pursuits; one representative of the
11 department of agriculture; two representatives from universities or
12 colleges knowledgeable in agricultural issues; one representative of
13 the public health or medical community; and one representative of the
14 conservation districts. The task force shall:

15 (a) Identify best management practices for reducing air
16 contaminant emissions from agricultural activities and provide such
17 information to the department and local air authorities;

18 (b) Determine the level of fees to be assessed by the permitting
19 agency pursuant to subsection (5) of this section, based upon the
20 level necessary to cover the costs of administering and enforcing the
21 permit programs, to provide funds for research into alternative
22 methods to reduce emissions from such burning, and to the extent
23 possible be consistent with fees charged for such burning permits in
24 neighboring states. The fee level shall provide, to the extent
25 possible, for lesser fees for permittees who use best management
26 practices to minimize air contaminant emissions;

27 (c) Identify research needs related to minimizing emissions from
28 agricultural burning and alternatives to such burning; and

29 (d) Make recommendations to the department on priorities for
30 spending funds provided through this chapter for research into
31 alternative methods to reduce emissions from agricultural burning.

32 (7) Conservation districts and the Washington State University
33 agricultural extension program in conjunction with the department
34 shall develop public education material for the agricultural
35 community identifying the health and environmental effects of
36 agricultural outdoor burning and providing technical assistance in
37 alternatives to agricultural outdoor burning.

38 (8)(a) Outdoor burning that is normal, necessary, and customary
39 to ongoing agricultural activities, that is consistent with
40 agricultural burning authorized under this section and RCW

1 70A.15.5110, is allowed within the urban growth area as described in
2 RCW 70A.15.5020 if the burning is not conducted during air quality
3 episodes, or where a determination of impaired air quality has been
4 made as provided in RCW 70A.15.3580, and the agricultural activities
5 preceded the designation as an urban growth area.

6 (b) Outdoor burning of cultivated orchard trees, whether or not
7 agricultural crops will be replanted on the land, shall be allowed as
8 an ongoing agricultural activity under this section if a local
9 horticultural pest and disease board formed under chapter 15.09 RCW,
10 an extension office agent with Washington State University that has
11 horticultural experience, or an entomologist employed by the
12 department of agriculture, has determined in writing that burning is
13 an appropriate method to prevent or control the spread of
14 horticultural pests or diseases.

15 **Sec. 4.** RCW 70A.15.5120 and 2020 c 20 s 1143 are each amended to
16 read as follows:

17 (1) The department of natural resources is responsible for
18 issuing and regulating burning permits required by it relating to the
19 following activities for the protection of life or property and for
20 the public health, safety, and welfare:

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

22 (b) Reducing the risk of a wildfire under RCW 70A.15.5020(5);

23 (c) Instruction of public officials in methods of forest
24 firefighting;

25 (d) Any silvicultural operation to improve the forestlands of the
26 state, including but not limited to forest health and resiliency,
27 decreasing forest insect or disease susceptibility, maintaining or
28 restoring native vegetation, or otherwise enhancing resiliency to
29 fire; and

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

34 (2) The department of natural resources shall not retain such
35 authority, but it shall be the responsibility of the appropriate fire
36 protection agency for permitting and regulating outdoor burning on
37 lands where the department of natural resources does not have fire
38 protection responsibility, except for the issuance of permits for
39 reducing the risk of wildfire under RCW 70A.15.5020(5). The

1 department of natural resources may enter into cooperative agreements
2 with local fire protection agencies to issue permits for reducing
3 wildfire risk under RCW 70A.15.5020(5).

4 (3) Permit fees shall be assessed for wildfire risk reduction,
5 combustion of natural vegetation from silvicultural activities in
6 portable flame cap kilns, and for silvicultural burning under the
7 jurisdiction of the department of natural resources and collected by
8 the department of natural resources as provided for in this section.
9 All fees shall be deposited in the air pollution control account,
10 created in RCW 70A.15.1010. The legislature shall appropriate to the
11 department of natural resources funds from the air pollution control
12 account to enforce and administer the program under this section and
13 RCW 70A.15.5130, 70A.15.5140, and 70A.15.5150. Fees shall be set by
14 rule by the department of natural resources at the level necessary to
15 cover the costs of the program after receiving recommendations on
16 such fees from the public.

17 **Sec. 5.** RCW 70A.15.5140 and 2020 c 20 s 1144 are each amended to
18 read as follows:

19 (1) The department of natural resources, in granting burning
20 permits for fires for the purposes set forth in RCW 70A.15.5120,
21 shall condition the issuance and use of such permits to comply to the
22 extent feasible with air quality standards established by the
23 department of ecology. Such burning shall not cause the state air
24 quality standards to be exceeded in the ambient air up to two
25 thousand feet above ground level over critical areas designated by
26 the department of ecology, otherwise subject to air pollution from
27 other sources. Air quality standards shall be established and
28 published by the department of ecology which shall also establish a
29 procedure for advising the department of natural resources when and
30 where air contaminant levels exceed or threaten to exceed the ambient
31 air standards over such critical areas. The air quality shall be
32 quantitatively measured by the department of ecology or the
33 appropriate local air pollution control authority at established
34 monitoring stations over such designated areas. Further, such
35 permitted burning shall not cause damage to public health or the
36 environment. All permits issued under this section shall be subject
37 to all applicable fees, permitting, penalty, and enforcement
38 provisions of this chapter. The department of natural resources shall
39 set forth smoke dispersal objectives designed consistent with this

1 section to minimize any air pollution from such burning and the
2 procedures necessary to meet those objectives.

3 (2)(a) The department of natural resources shall encourage more
4 intense utilization in logging and alternative silviculture practices
5 to reduce the need for burning. The department of natural resources
6 shall, whenever practical, encourage landowners to develop and use
7 alternative acceptable disposal methods subject to the following
8 priorities:

9 ~~((1))~~ (i) Slash production minimization(~~((2) slash))~~;

10 (ii) ~~Slash~~ utilization(~~((3) nonburning))~~;

11 (iii) ~~Nonburning~~ disposal(~~((4) silvicultural))~~;

12 (iv) ~~Silvicultural~~ burning; and

13 (v) Use of portable flame cap kilns.

14 (b) Such alternative methods shall be evaluated as to the
15 relative impact on air, water, and land pollution, public health, and
16 their financial feasibility.

17 (3) The department of natural resources shall not issue burning
18 permits and shall revoke previously issued permits at any time in any
19 area where the department of ecology or local board has declared a
20 stage of impaired air quality as defined in RCW 70A.15.3580.

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