

HOUSE BILL REPORT

HB 3002

As Reported by House Committee On:
Fisheries, Ecology & Parks

Title: An act relating to regulation of outdoor burning.

Brief Description: Authorizing statewide regulation of outdoor burning.

Sponsors: Representatives Cooper, Lovick, Romero and Chase; by request of Washington State Patrol.

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 2/5/04, 2/6/04 [DPS].

Brief Summary of Substitute Bill

- Permits the Governor to enact a temporary statewide ban on outdoor burning during an extreme fire hazard.
- Assigns criminal and civil penalties for violations of a temporary statewide burn ban.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Upthegrove, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield, O'Brien, Pearson and D. Simpson.

Staff: Jason Callahan (786-7117).

Background:

Outdoor burning, or the combustion of material in an open fire without providing for emissions control, is permitted in many areas of the state. Specifically, one is permitted to burn if the activity does not occur in an area where the federal or state ambient air quality limits are exceeded for the pollutants associated with outdoor burning. In addition, outdoor burning is permitted in any area except within the urban growth

boundary of any city with a population of more than 5,000 residents, regardless of air current air quality, as well as any city located within or contiguous to any area that has been identified as having a history of poor air quality.

There are certain circumstances when outdoor burning is allowed in areas where the activity is otherwise prohibited. These circumstances include the burning of storm or flood-related debris, and certain agricultural burning. A person located in the urban growth area of a city with a population greater than 5,000 residents may still conduct agricultural burning if that burning is normal, necessary, and customary to ongoing agricultural activities, and not conducted during a period of impaired air quality.

Summary of Substitute Bill:

Temporary Prohibition on Outdoor Burning

The Governor is given express authority to issue an executive order that prohibits all outdoor burning either throughout the state, or within specific portions of the state. An executive order prohibiting outdoor burning may only be issued if the Governor receives a recommendation to do so from the state fire marshal. Outdoor burning is defined as the combustion of material in an open fire or outdoor container without providing for the control or combustion of fire-causing emissions.

The state fire marshal may recommend a prohibition on outdoor burning if he or she finds that extreme fire hazards exist and that state resources may be in danger, or that there is a threat to life or property. The finding of an extreme fire danger must be determined using the National Weather Service's fire danger rating system. The state fire marshal is required to consult and reach concurrence with the Commission of Public Lands, the Department of Ecology, the Department of Agriculture, and the State Parks prior to making a recommendation to the Governor.

The executive order issued by the Governor would be applicable to both state and private lands, and would remain in effect until rescinded by the Governor. The executive order could allow for some burning if the specific exemptions did not unduly endanger state resources or the protection of life or property.

Penalties and Enforcement

Both intentional and negligent violations of a gubernatorial executive order are enforceable by any general or limited authority peace officer, or by a local fire authority. Intentional violations are punishable as a gross misdemeanor, and negligent violations are punishable as a class 1 civil infraction.

In addition, any person injured because of a violation of an executive order will have a

valid cause of civil action against the party unlawfully engaging in outdoor burning. If found liable, the violating party can be held responsible for actual damages, reasonable attorneys' fees, court costs, and costs incurred while investigating the incident.

Substitute Bill Compared to Original Bill:

The substitute bill requires the recommendation of the state fire marshal to be based on the fire danger rating system administered by the National Weather Service, allows an executive order to be issued when there is a threat to life *or* property as opposed to life *and* property, and requires the state fire marshal to reach consensus with other state agencies before recommending that the Governor issue an executive order.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) Fire fighting resources are limited in Washington, and preventative measures can help the situation. Many human-caused fires can be prevented by limiting outdoor burning during times of fire danger. A statewide prohibition would be rare, but could be a useful tool to protect against wildfires. The bill would require hazards to be assessed in comparison with the resources available to address the hazards.

(Concerns: Original bill) The bill should require the executive order to be based on a standardized reference point to give a bright line that would justify a prohibition. Standards would remove doubt and lend credibility to a statewide prohibition on outdoor burning.

Testimony Against: None.

Persons Testifying: (In support) Anjela Foster, Washington State Patrol - Office of the State Fire Marshal; and Mike Ryherd, Puget Sound Clean Air Agency.

(In support with changes) Jerry Farley, Washington Independence Day Association.

Persons Signed In To Testify But Not Testifying: None.