H-4271.1

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**SUBSTITUTE HOUSE BILL 2928**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Blake, Schmick, Dunshee, Short, Haler, Stanford, and Chandler)

AN ACT Relating to ensuring that restrictions on outdoor burning for air quality reasons do not impede measures necessary to ensure forest resiliency to catastrophic fires; and amending RCW 76.04.205, 70.94.6512, 70.94.6514, 70.94.6538, and 70.94.6540.

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

**Sec.**  RCW 76.04.205 and 1986 c 100 s 17 are each amended to read as follows:

(1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forest lands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality and ((~~[the department]~~)) the department may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to firefighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done either:

(i) In compliance with air quality standards established by chapter 70.94 RCW; or

(ii) For forest resiliency burning, the permitted burning is unlikely to significantly contribute to a violation of air quality standards established by chapter 70.94 RCW.

(4)(a) Except as provided in (b) of this subsection, the department, 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 in their judgment to prevent air pollution as provided in chapter 70.94 RCW.

(b) The department, authorized employees, or any warden or ranger may refuse, revoke, or postpone the use of permits for forest resiliency burning only if:

(i) Necessary for the safety of adjacent property; or

(ii) Burning poses an unreasonable risk of air pollution as provided in chapter 70.94 RCW, taking into account the likelihood and magnitude of subsequent air pollution from an unplanned and uncontrolled fire if the burn permit is refused, revoked, or postponed.

(5)(a) Under this section, the department must issue burn permits that span multiple days for forest resiliency burning. A burn permit spanning multiple days may only be revoked or postponed midway during the duration of the permit when necessary for the safety of adjacent property or upon a determination by the department or the department of ecology that the burn has significantly contributed to a violation of air quality standards under chapter 70.94 RCW.

(b) Permits issued under this section must be issued at least twenty-four hours prior to the proposed forest resiliency burn.

(6) For the purposes of this section, "forest resiliency burning" means silvicultural burning carried out under the supervision of qualified silvicultural, ecological, or fire management professionals and used to improve or maintain fire dependent ecosystems, to mitigate severe wildfire potential, to decrease forest susceptibility to forest insect or disease as defined in RCW 76.06.020, or to otherwise enhance forest resiliency to fire.

**Sec.**  RCW 70.94.6512 and 2009 c 118 s 102 are each amended to read as follows:

Except as provided in RCW 70.94.6546 and 70.94.6514(4), no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473.

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

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

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

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

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

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

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

(4) This section ((~~shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas~~)) and RCW 70.94.6512 do not apply to forest resiliency burning as defined in RCW 76.04.205(6).

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

(1) The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.6534 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

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

(3) Except for permits for forest resiliency burning as provided in RCW 76.04.205, the department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473.

**Sec.**  RCW 70.94.6540 and 2009 c 118 s 503 are each amended to read as follows:

(1) In the regulation of outdoor burning not included in RCW 70.94.6534 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW 70.94.6512, 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526. The department shall develop agreements with all local authorities to coordinate regulations.

(2) Except for permits for forest resiliency burning as provided in RCW 76.04.205, permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology.

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