

---

HOUSE BILL 2326

---

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Jenkins, Ladenburg, Darneille, Fitzgibbon, Upthegrove, Seaquist, Moscoso, Green, Kagi, Billig, Tharinger, Pollet, Wylie, Reykdal, McCoy, Eddy, Hunt, and Lytton

Read first time 01/11/12. Referred to Committee on Environment.

1 AN ACT Relating to protecting air quality that is impacted by high  
2 emitting solid fuel burning devices; and amending RCW 70.94.473 and  
3 70.94.477.

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

5 **Sec. 1.** RCW 70.94.473 and 2008 c 40 s 1 are each amended to read  
6 as follows:

7 (1) Any person in a residence or commercial establishment which has  
8 an adequate source of heat without burning wood shall:

9 (a) Not burn wood in any solid fuel burning device whenever the  
10 department has determined under RCW 70.94.715 that any air pollution  
11 episode exists in that area;

12 (b) Not burn wood in any solid fuel burning device except those  
13 which are either Oregon department of environmental quality phase II or  
14 United States environmental protection agency certified or certified by  
15 the department under RCW 70.94.457(1) or a pellet stove either  
16 certified or issued an exemption by the United States environmental  
17 protection agency in accordance with Title 40, Part 60 of the code of  
18 federal regulations, in the geographical area and for the period of  
19 time that a first stage of impaired air quality has been determined, by

1 the department or any authority, for that area. A first stage of  
2 impaired air quality is reached when forecasted meteorological  
3 conditions are predicted to cause fine particulate levels to reach or  
4 exceed (~~((thirty-five micrograms per cubic meter))~~) eighty-five percent  
5 of the national ambient air quality standard for fine particulates,  
6 measured on a twenty-four hour average, within (~~((forty-eight))~~) seventy-  
7 two hours; and

8 (c)(i) Not burn wood in any solid fuel burning device in a  
9 geographical area and for the period of time that a second stage of  
10 impaired air quality has been determined by the department or any  
11 authority, for that area. A second stage of impaired air quality is  
12 reached when a first stage of impaired air quality has been in force  
13 and has not been sufficient to reduce the increasing fine particulate  
14 pollution trend, the ambient level of fine particulates (~~((are at an~~  
15 ~~ambient level of twenty-five micrograms per cubic meter))~~) is at seventy  
16 percent of the national ambient air quality standard, measured on a  
17 twenty-four hour average, and forecasted meteorological conditions are  
18 not expected to allow levels of fine particulates to decline below  
19 (~~((twenty-five micrograms per cubic meter))~~) seventy percent of the  
20 national ambient air quality standard for a period of twenty-four hours  
21 or more from the time that the fine particulates are measured at the  
22 trigger level.

23 (ii) A second stage burn ban may be called without calling a first  
24 stage burn ban only when all of the following occur and shall require  
25 the department or the local air pollution control authority calling a  
26 second stage burn ban under this subsection to comply with the  
27 requirements of subsection (~~((4))~~) (3) of this section:

28 (A) Fine particulate levels have reached or exceeded (~~((twenty-five~~  
29 ~~micrograms per cubic meter))~~) seventy percent of the national ambient  
30 air quality standard, measured on a twenty-four hour average;

31 (B) Meteorological conditions have caused fine particulate levels  
32 to rise rapidly;

33 (C) Meteorological conditions are predicted to cause fine  
34 particulate levels to reach or exceed (~~((the thirty-five micrograms per~~  
35 ~~cubic meter))~~) eighty-five percent of the national ambient air quality  
36 standard, measured on a twenty-four hour average, within twenty-four  
37 hours; and

1 (D) Meteorological conditions are highly likely to prevent  
2 sufficient dispersion of fine particulate.

3 (2) Actions of the department and local air pollution control  
4 authorities under this section shall preempt actions of other state  
5 agencies and local governments for the purposes of controlling air  
6 pollution from solid fuel burning devices, except where authorized by  
7 chapter 199, Laws of 1991.

8 (3) The department or any local air pollution control authority  
9 that has called a second stage burn ban under the authority of  
10 subsection (1)(c)(ii) of this section shall, within ninety days,  
11 prepare a written report describing:

12 (a) The meteorological conditions that resulted in their calling  
13 the second stage burn ban;

14 (b) Whether the agency could have taken actions to avoid calling a  
15 second stage burn ban without calling a first stage burn ban; and

16 (c) Any changes the department or authority is making to its  
17 procedures of calling first stage and second stage burn bans to avoid  
18 calling a second stage burn ban without first calling a first stage  
19 burn ban.

20 After consulting with affected parties, the department shall  
21 prescribe the format of such a report and may also require additional  
22 information be included in the report. All reports shall be sent to  
23 the department and the department shall keep the reports on file for  
24 not less than five years and available for public inspection and  
25 copying in accordance with RCW 42.56.090.

26 ~~((4) The department and local air pollution control authorities  
27 shall evaluate the effectiveness of the burn ban programs contained in  
28 this section in avoiding fine particulate levels to exceed thirty five  
29 micrograms per cubic meter, measured on a twenty four hour average, and  
30 provide a joint report of the results to the legislature by September  
31 1, 2011.))~~

32 **Sec. 2.** RCW 70.94.477 and 2009 c 282 s 1 are each amended to read  
33 as follows:

34 (1) Unless allowed by rule under chapter 34.05 RCW, a person shall  
35 not cause or allow any of the following materials to be burned in any  
36 residential solid fuel burning device:

37 (a) Garbage;

- 1 (b) Treated wood;
- 2 (c) Plastics;
- 3 (d) Rubber products;
- 4 (e) Animals;
- 5 (f) Asphaltic products;
- 6 (g) Waste petroleum products;
- 7 (h) Paints; or

8 (i) Any substance, other than properly seasoned fuel wood, which  
9 normally emits dense smoke or obnoxious odors. For the purposes of  
10 this section, "seasoned fuel wood" means firewood for use in a solid  
11 fuel burning device that has a moisture content of no more than twenty  
12 percent.

13 (2) To achieve and maintain attainment in areas of nonattainment  
14 for fine particulates in accordance with section 172 of the federal  
15 clean air act, a local air pollution control authority or the  
16 department may, after meeting requirements in subsection (3) of this  
17 section, prohibit the use of solid fuel burning devices, except:

18 (a) Fireplaces as defined in RCW 70.94.453(3), except if needed to  
19 meet federal requirements as a contingency measure in a state  
20 implementation plan for a fine particulate nonattainment area;

21 (b) Woodstoves meeting the standards set forth in RCW  
22 70.94.473(1)(b); or

23 (c) Pellet stoves.

24 (3) Prior to prohibiting the use of solid fuel burning devices  
25 under subsection (2) of this section, the department or the local air  
26 pollution control authority must:

27 (a) Seek input from any city, county, or jurisdictional health  
28 department affected by the proposal to prohibit the use of solid fuel  
29 burning devices; and

30 (b) Make written findings that:

31 (i) The area is designated as an area of nonattainment for fine  
32 particulate matter by the United States environmental protection  
33 agency, or is in maintenance status under that designation;

34 (ii) Emissions from solid fuel burning devices in the area are a  
35 major contributing factor for violating the national ambient air  
36 quality standard for fine particulates; and

37 (iii) The area has an adequately funded program to assist low-

1 income households to secure an adequate source of heat, which may  
2 include woodstoves meeting the requirements of RCW 70.94.453(2).

3 (4) If and only if the nonattainment area is within the  
4 jurisdiction of the department and the legislative authority of a city  
5 or county within the area of nonattainment formally expresses concerns  
6 with the department's written findings, then the department must  
7 publish on the department's web site the reasons for prohibiting the  
8 use of solid fuel burning devices under subsection (2) of this section  
9 that includes a response to the concerns expressed by the city or  
10 county legislative authority.

11 (5) When a local air pollution control authority or the department  
12 prohibits the use of solid fuel burning devices as authorized by this  
13 section, the cities, counties, and jurisdictional health departments  
14 serving the area shall cooperate with the department or local air  
15 pollution control authority as the department or the local air  
16 pollution control authority implements the prohibition. ~~((However,~~  
17 ~~cooperation shall not include enforcement of this prohibition.))~~ The  
18 responsibility for actual enforcement of the prohibition shall reside  
19 solely with the department or the local air pollution control  
20 authority. A city, county, or jurisdictional health department serving  
21 the area may agree to assist with enforcement activities.

22 (6) A prohibition issued by a local air pollution control authority  
23 or the department under this section shall not apply to a person in a  
24 residence or commercial establishment that does not have an adequate  
25 source of heat without burning wood.

26 (7) As used in this section ~~((τ))~~ :

27 (a) "Jurisdictional health department" means a city, county, city-  
28 county, or district public health department.

29 (b) "Prohibit the use" or "prohibition" may include requiring  
30 disclosure, removal, rendering inoperable, providing evidence of  
31 destruction, or other similar requirements as may be approved by rule  
32 by a local air pollution control authority or the department.

--- END ---