



# Senate

General Assembly

**File No. 691**

January Session, 2011

Substitute Senate Bill No. 830

*Senate, May 2, 2011*

The Committee on Planning and Development reported through SEN. CASSANO of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT PROHIBITING THE USE OF CERTAIN OUTDOOR WOOD-BURNING FURNACES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-174k of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) For purposes of this section, "residence" means any structure  
4 customarily used for human habitation. "Residence" does not include  
5 any structure or portion of any structure that is not customarily used  
6 for human habitation that is contiguous to a structure customarily  
7 used for habitation; and "outdoor wood-burning furnace" means an  
8 accessory structure or appliance designed to be located outside living  
9 space ordinarily used for human habitation and designed to transfer or  
10 provide heat, via liquid, hot air or other means, through the burning of  
11 wood or solid waste, for heating spaces other than where such  
12 structure or appliance is located, any other structure or appliance on  
13 the premises, or for heating domestic, swimming pool, hot tub or

14 jacuzzi water. "Outdoor wood-burning furnace" does not include a fire  
15 pit, wood-fired barbecue or chiminea.

16 (b) No person shall, [from] on and after July 8, 2005, [to the effective  
17 date of regulations promulgated by the United States Environmental  
18 Protection Agency to regulate outdoor wood-burning furnaces,]  
19 construct, install, establish, modify, operate or use an outdoor wood-  
20 burning furnace, unless (1) the outdoor wood-burning furnace was  
21 constructed, installed, established, modified, operated or in use prior  
22 to July 8, 2005, or (2) the outdoor wood-burning furnace complies with  
23 the following:

24 (A) [Installation of the] The chimney of the outdoor wood-burning  
25 furnace is not less than two hundred feet from the nearest exterior wall  
26 of an existing residence not serviced by the outdoor wood-burning  
27 furnace;

28 (B) Installation of the chimney of the outdoor wood-burning furnace  
29 is at a height that is more than the height of the existing roof peaks of  
30 the residences that are located within five hundred feet of the outdoor  
31 wood-burning furnace, which residences are not serviced by the  
32 outdoor wood-burning furnace, provided the chimney height is not  
33 more than fifty-five feet;

34 (C) No other materials are burned in the outdoor wood-burning  
35 furnace other than wood that has not been chemically treated or wood  
36 pellets; and

37 (D) Installation and operation of the outdoor wood-burning furnace  
38 is in accordance with the manufacturer's written instructions, provided  
39 such instructions do not conflict with the provisions of this section.

40 (c) On and after October 1, 2011, no person shall construct, install,  
41 establish, modify, operate or use an outdoor wood-burning furnace,  
42 unless such outdoor wood-burning furnace meets a Phase II emission  
43 standard with a particulate matter emission limit of 0.32 pounds per  
44 MMBtu heat output.

45 [(c)] (d) The provisions of this section shall be enforced by the  
 46 Commissioner of Environmental Protection and may be enforced by  
 47 the municipality affected by the operation or potential operation of an  
 48 outdoor wood-burning furnace. Any municipality may regulate or  
 49 institute a prohibition on the operation or use of outdoor wood-  
 50 burning furnaces for the period beginning May fifteenth and ending  
 51 September fifteenth, or any period of time between such dates,  
 52 provided nothing in this subsection shall be construed to affect any  
 53 municipal ordinance or regulation concerning the operation or use of  
 54 outdoor wood-burning furnaces. Any local director of health also may  
 55 enforce the provisions of this section.

56 [(d)] (e) Any person who operates an outdoor wood-burning  
 57 furnace in violation of this section shall be deemed to have committed  
 58 [an infraction] a violation and shall be fined not more than [ninety]  
 59 two hundred fifty dollars for a first violation. Each subsequent day of  
 60 operation of such outdoor wood-burning furnace in violation of this  
 61 section following such first violation shall be a separate violation and  
 62 shall carry a fine of one hundred dollars for each such subsequent day.

63 (f) Nothing in this section shall be construed to prohibit the  
 64 replacement or modification of any outdoor wood-burning furnace to  
 65 meet a Phase II emission standard.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	22a-174k

**PD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Department of Environmental Protection	GF - Potential Revenue Gain	Less than 1,000	Less than 1,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill may result in a revenue gain to the state of less than \$1,000 in both FY 12 and FY 13 as it increases the amount of the outdoor wood-burning furnaces violation, from \$90 to \$250. The bill also imposes a \$100 fine for each subsequent day of operating in violation of the law. In FY 10, there was one outdoor wood-burning furnace infraction.<sup>1</sup> It is anticipated that there will be less than 10 violations in both FY 12 and FY 13.

It also allows municipalities to regulate or prohibit the operating of outdoor wood-burning furnaces or their use at certain times of the year and provides local health directors with enforcement powers. It is anticipated that local health directors would enforce these provisions to the extent that resources allow.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

<sup>1</sup> The bill changes a wood-burning furnaces infraction to a violation.

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**OLR Bill Analysis****sSB 830*****AN ACT PROHIBITING THE USE OF CERTAIN OUTDOOR WOOD-BURNING FURNACES.*****SUMMARY:**

This bill (1) continues the conditional ban on constructing, installing, establishing, modifying, operating, or using an outdoor wood-burning furnace unless it meets certain revised requirements and (2) requires all outdoor wood-burning furnaces to meet an emissions standard if they are constructed, installed, established, modified, operated, or in use on and after October 1, 2011. It allows furnace replacement or modification to meet the standard.

Additionally, the bill explicitly allows municipalities to regulate or prohibit outdoor wood-burning furnace operation or use at certain times of the year and provides local health directors with enforcement powers. It adds "hot air" to the means by which an outdoor wood-burning furnace transfers or provides heat and allows such furnaces to burn wood pellets. The bill also increases the penalty for violating the law.

EFFECTIVE DATE: October 1, 2011

**OUTDOOR WOOD-BURNING FURNACE REQUIREMENTS**

By law, people may not construct, install, establish, modify, operate, or use an outdoor wood-burning furnace between July 8, 2005 and the date the U.S. Environmental Protection Agency (EPA) regulations governing these furnaces take effect (they were never adopted) unless it was built or in use before July 8, 2005 or the furnace:

1. is installed at least 200 feet from the nearest residence not serviced by it;

2. has a chimney no higher than 55 feet but higher than the roof peaks of residences not serviced by it within 500 feet of the furnace;
3. burns only non-chemically treated wood; and
4. is installed and operated according to the manufacturer's written instructions, provided the instructions comply with the law.

The bill requires all outdoor wood-burning furnaces constructed, installed, established, modified, operated, or in use on and after July 8, 2005 to either (1) have been constructed, installed, established, modified, operated, or in use before July 8, 2005 or (2) comply with the four above requirements, with three modifications. First, the chimney must be at least 200 feet from the nearest exterior wall of an existing residence not serviced by it, instead of the residence. The bill defines a residence as any structure customarily used for human habitation, but it excludes contiguous structures or portions of structures not customarily used for human habitation (e.g., garages). Second, it specifies that a chimney must be higher than the existing roof peaks of residences not serviced by it within 500 feet of the furnace and no higher than 55 feet. And third, the furnace may burn wood pellets as well as non-chemically treated wood.

The bill also requires all outdoor wood-burning furnaces constructed, installed, established, modified, operated, or in use on and after October 1, 2011 to meet a Phase II emission standard with a particulate matter emission limit of 0.32 pounds per MMBtu heat output (see BACKGROUND).

## **REGULATION AND ENFORCEMENT**

The bill explicitly allows municipalities to regulate or prohibit outdoor wood-burning furnace operation or use from May 15 to September 15 or any time between these dates. But it provides that it does not affect any municipal ordinance or regulation concerning outdoor wood-burning furnace operation or use.

By law, municipalities can define, prohibit, and abate nuisances and things detrimental to the health, morals, safety, convenience, and welfare of their inhabitants. They also can regulate smoke emission from any chimney, smokestack, or other source within their limits. It is not clear if the bill is limiting existing municipal powers concerning smoke emission by explicitly allowing municipalities to ban furnace use during some period between May 15 and September 15, while remaining silent as to the rest of the year.

Under existing law, the Department of Environmental Protection commissioner must enforce the furnace law's provisions, and a municipality affected by an outdoor wood-burning furnace's operation or potential operation can enforce them. The bill explicitly authorizes local health directors to enforce the law.

## **PENALTIES**

Under current law, anyone operating a furnace in violation of the law commits an infraction, punishable by a fine of up to \$90. Each day of operation is considered a separate infraction. The bill (1) changes the infraction to a violation, (2) requires a fine of up to \$250 for the first violation, and (3) imposes a \$100 fine for each subsequent day of operating in violation of the law.

## **BACKGROUND**

### ***Emission Standards***

While indoor wood stoves must meet EPA-certified emissions levels, outdoor wood-burning furnaces are not required to meet a federal emission standard. In 2007, EPA began a voluntary partnership with manufacturers to design and market cleaner, more efficient furnaces. The furnaces are certified and labeled to meet EPA emissions performance levels in two phases: Phase I emissions levels of 0.60 pounds of particulate matter per million British thermal units (MMBtu) of heat input and Phase II emissions levels of 0.32 pounds of particulate matter per MMBtus of heat output.

### ***Legislative History***

The Senate referred the bill (File 421) to the Planning and Development Committee, which reported a substitute that requires all outdoor wood-burning furnaces constructed, installed, established, modified, operated, or in use on and after October 1, 2011 to meet a Phase II emission standard with a particulate matter emission limit of 0.32 pounds per MMBtu heat output. The prior version of the bill required such furnaces to meet this standard unless they were constructed, installed, established, modified, operated, or in use prior to October 1, 2011 and, if applicable, met the law's installation and operation specifications and requirements.

**COMMITTEE ACTION**

## Environment Committee

Joint Favorable Substitute

Yea 26 Nay 1 (03/18/2011)

## Planning and Development Committee

Joint Favorable Substitute

Yea 15 Nay 4 (04/18/2011)