

HOUSE BILL REPORT

HB 1205

*As Reported By House Committee on:
Natural Resources & Parks*

Title: An act relating to forest fires.

Brief Description: Clarifying forest fire fighting duties.

Sponsor(s): Representatives Belcher, Beck, Scott, Broback, Hargrove, H. Sommers, Bowman, Silver, H. Myers, R. Meyers, Winsley, Edmondson, Wynne and Basich; by request of Department of Natural Resources.

Brief History:

Reported by House Committee on:
Natural Resources & Parks, February 15, 1991, DPS.

**HOUSE COMMITTEE ON
NATURAL RESOURCES & PARKS**

Majority Report: *That Substitute House Bill No. 1205 be substituted therefor, and the substitute bill do pass.*
Signed by 10 members: Representatives Belcher, Chair; Scott, Vice Chair; Beck, Ranking Minority Member; Brumsickle, Assistant Ranking Minority Member; Dellwo; Fraser; Hargrove; Morton; Riley; and Wynne.

Staff: Marilee Scarbrough (786-7196).

Background: The Department of Natural Resources (DNR) has identified three problems in the forest protection statutes as they relate to forest fires. They involve the department's fire suppression responsibilities to the public in general, the recovery of fire suppression costs by federal agencies, and the possession of evidence in fire investigations.

Fire Suppression Responsibilities

A recent State Supreme Court decision held the department liable for a fire which started on department lands and injured the property of adjoining landowners. The court rejected the department's argument that the department had a public duty, not a duty to individual landowners.

Under existing statutes landowners must provide adequate protection against the spread of fire on their lands. If

landowners fail or neglect to provide adequate fire protection, the department is required to provide that protection and is authorized to charge a fire protection assessment to the landowner. The payment of fire assessments was an important factor in the courts decision that the department was liable to individual landowners. The department is concerned that this decision will make the department vulnerable to future negligence law suits when the department is acting in its fire fighting and suppression capacity.

Recovery of Fire Suppression Costs

Current law authorizes recovery of costs when a fire is caused through negligence, or when a fire is spread because an extreme fire hazard is created or forest debris is allowed to build up. The State, a municipality or a forest protective association are the only entities currently allowed to recover costs. The department has had difficulty recovering for costs incurred by federal agencies who assist in suppression of fires.

Collection of Evidence in Fire Investigations

The department is responsible for investigating the origin and cause of all forest fires but it does not have statutory authority to take possession of evidence. This has effected the department's ability to prove some cases.

Summary of Substitute Bill: The public duty doctrine is established for the Department of Natural Resources when the department is acting in its fire fighting and suppression capacity. New language is added to the fire protection statute which provides that the duties of the Department of Natural Resources to prevent and suppress forest fires are owed to the public in general and not to any individual or class of persons separate from the general public.

The language further states that payment of forest protection and fire suppression assessments does not create a special duty by the department toward those who pay the assessments.

Language is changed to clarify that costs incurred by a federal fire fighting agency are recoverable to the same extent as those incurred by the department.

Fire investigators are authorized to seize relevant evidence found in plain view. If the owner objects, the department must obtain a court order within fourteen days for continued possession of the property.

Substitute Bill Compared to Original Bill: The substitute bill clarifies that the department's duties and responsibilities as a private landowner are not altered by the creation of the public duty doctrine. The language regarding expenses recoverable from individuals, firms, or corporations who negligently cause a fire is clarified. The department's authority to take possession and control of evidence is limited to relevant evidence in plain view.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The department has always assumed that the public duty doctrine applied to fire fighting activities. The department's policy is to put the public interest first and foremost. Payment of an assessment is not an insurance policy. The department often fights fires side by side with federal agencies. The current cost recovery language is unclear. The lack of clarity has led to litigation and negotiation which ultimately costs the general fund. The department needs the authority to seize evidence. Evidence is essential for litigation.

Testimony Against: If the department is given the authority to seize evidence, the department cannot be given a blank check. The owners of property need an opportunity to recover their property.

Witnesses: Stan Biles, Department of Natural Resources (in favor); Gary Alexander, General Administration-Risk Management Division (in favor); Ott Jensen, Washington Association of Fire Chiefs (in favor); and Tim Boyd, Washington Forest Protection Association (opposed to seizure language in original HB 1205).