

**SENATE BILL REPORT**

**SB 5025**

**AS REPORTED BY COMMITTEE ON NATURAL RESOURCES, FEBRUARY 3, 1993**

**Brief Description:** Clarifying forest fire fighting duties.

**SPONSORS:** Senator Owen

**SENATE COMMITTEE ON NATURAL RESOURCES**

**Majority Report:** That Substitute Senate Bill No. 5025 be substituted therefor, and the substitute bill do pass.

Signed by Senators Owen, Chairman; Hargrove, Vice Chairman; Amondson, Erwin, Franklin, Haugen, Oke, Sellar, L. Smith, Snyder, and Spanel.

**Staff:** Vic Moon (786-7469)

**Hearing Dates:** January 13, 1993; February 1, 1993;  
February 3, 1993

**BACKGROUND:**

The Department of Natural Resources (DNR) has identified three problems in the forest fire protection statutes: (1) the department's fire suppression responsibilities to the public in general; (2) the recovery of fire suppression costs by federal agencies; and (3) the taking of possession of evidence in fire investigations.

A recent State Supreme Court decision held the department liable for property damage caused by the Barker Mountain fire which started on department lands. The court rejected the department's argument that the department had only a public duty and not a duty to individual landowners.

Statutes require landowners to 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 court's decision that the department was liable to individual landowners. This decision will make the department vulnerable to future negligence law suits when the department is acting in its fire fighting and suppression capacity.

The department may recover costs when a fire is caused through negligence, or when a fire is spread because an extreme fire hazard is created or if 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.

The department is responsible for investigating the origin and cause of all forest fires but, unlike local governments, does not have statutory authority to take possession of evidence. This has affected the department's legally mandated requirement to prove fire responsibility.

**SUMMARY:**

A public duty doctrine is established for the Department of Natural Resources when the department is acting in its fire fighting and suppression capacity. This duty is owed to the public in general and not to any individual or class of persons separate from the general public. Payment of forest protection and fire suppression assessments will not create a special department duty toward those who pay the assessments.

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 of the evidence objects, the department must obtain a court order within 14 days for continued possession of the property.

**EFFECT OF PROPOSED SUBSTITUTE:**

A starting date for federal fire fighting cost recovery is set for June 30, 1993. Utilities will assist in the collection of evidence and its preservation.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

The state's liability for fire fighting needs to be clarified and the department needs authority to collect evidence to establish fire causes.

**TESTIMONY AGAINST:** None

**TESTIFIED:** PRO: Bob Gustavson; Betty Reed; Ken Hoover, DNR; Tim Boyd, Washington Forest Protection Association