

SENATE BILL REPORT

SB 5315

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 28, 2007

Title: An act relating to property access during forest fires.

Brief Description: Regarding access to property during a forest fire.

Sponsors: Senators Schoesler, Rasmussen, Holmquist, Sheldon, Honeyford, Stevens, Clements, Morton, Delvin, Hatfield, Kilmer, Shin and Roach.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/08/07, 2/12/07, 2/28/07 [DPS].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 5315 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Poulsen, Spanel, Stevens and Swecker.

Staff: Curt Gavigan (786-7437)

Background: The Legislature has designated the Department of Natural Resources (DNR) as the state's manager for the purposes of forest fire prevention and suppression activities. In this role, DNR must take charge of and supervise all matters pertaining to the forest fire service of the state.

By statute, the primary fire-related mission of DNR is, first, to save lives and, second, to protect forest resources and suppress forest fires. DNR must focus on forest fire protection and suppression, allowing rural fire districts and municipal fire departments to protect structures and fight structural fires. In exercising its fire protection and suppression responsibilities, DNR carries out duties owed to the public in general and not to any individual person or class of persons.

The Department of Transportation, State Patrol, and county and city governments each have the authority to close specified types of roads where vehicle travel will damage the road or be dangerous to traffic.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Residents, landowners, and others in lawful possession and control of land have the right to access their land during a forest fire or wildfire in order to: (1) conduct fire prevention or suppression activities; (2) protect or retrieve property; or (3) both.

DNR and state or local governments imposing a road closure must, to the maximum extent practicable, allow and facilitate this access.

DNR and state or local governments are not liable for any action, or inaction, with regards to providing this access.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Natural Resources, Ocean & Recreation): The language of the underlying bill is removed.

The Washington Association of Sheriffs and Police Chiefs must convene a model policy work group to develop a model policy regarding residents, landowners, and others in lawful possession and control of land in the state during a forest fire or wildfire. The model policy must be designed, first and foremost, to protect life and safety. The model policy must also include guidance on allowing access to lands, when safe and appropriate, during a forest fire or wildfire. This requirement is null and void if the Legislature does not provide specific funding for development of the model policy.

Each county sheriff may, until the model policy is developed and implemented in the county, establish and maintain a registry of persons authorized to access their land during a forest fire or wildfire. Upon request, the sheriff must include in the registry persons who demonstrate ownership of agriculture or forest land and who possess equipment that may be used for fire prevention or suppression activities. Persons included in the registry must be allowed to access their property to conduct fire prevention or suppression activities despite a road closure.

Federal, state, and local agencies are provided immunity when facilitating access under these provisions. Private landowners are provided immunity for injuries or loss suffered by persons entering upon, or passing through, their land under these provisions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Individuals want, and have the ability to, play a role in the protection of their residences and land. In the agricultural community, individuals have equipment that can create fire lines. Landowner actions are a good way to keep small fires from developing into larger fires. Local residents have always considered safety when undertaking these fire suppression activities. Additionally, there are some areas not covered by fire protection districts and many situations where insufficient resources exist to adequately fight a fire. In these situations, landowner fire response makes sense. In recent years, landowners have been detained or arrested trying to get to their land to undertake fire protection and suppression activities.

Allowing fire access, especially to protect livestock, is an excellent idea.

CON: Forest landowners want to cooperate with fire access, but are concerned about liability for those injured while crossing private forest lands.

OTHER: There is indeed a desire to allow landowners safe access to their property during fires. However, cooperation between local, state, and federal agencies using existing authority can go a long way to address the access issue. There are concerns about who will monitor access before an incident command structure is put in place. There are also concerns about liability for agencies who allow individuals to access their property under dangerous circumstances.

Persons Testifying: PRO: Senator Schoesler, prime sponsor; Gene Warren, Don Jackson, Dick Rubenser, landowners; Jack Field, Washington Cattlemen's Association.

CON: Debora Munguia, Washington Forest Protection Association.

OTHER: Howard Thronson, DNR; James McMahan, Washington Association of Sheriffs and Police Chiefs; Mike Brown, Washington Fire Chiefs.