

HOUSE BILL REPORT

HB 2549

As Reported by House Committee On:
Local Government & Housing

Title: An act relating to firefighting services on areas outside a fire protection jurisdiction.

Brief Description: Concerning providing firefighting services to areas outside a fire protection jurisdiction.

Sponsors: Representatives Chandler and Simpson.

Brief History:

Committee Activity:

Local Government & Housing: 1/18/10, 2/1/10 [DPS].

Brief Summary of Substitute Bill

- Creates a new chapter in RCW Title 52 for the provision of fire protection services to lands outside of the jurisdictional boundaries of any of the various fire protection service providers.
- Clarifies the tort liability of a fire protection service agency, and its employees, with respect to providing firefighting services outside of the jurisdictional boundaries of the agency.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; Fagan, Miloscia, Short, Springer, Uptegrove, White and Williams.

Staff: Thamas Osborn (786-7129).

Background:

Overview: Fire Protection Services.

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.

State law authorizes the creation of several types of fire protection/emergency service providers so as to address the varying needs of cities, towns, and counties as determined by demographic factors, geography, and other regional differences. The primary types of fire protection service providers are:

- city/town fire departments;
- fire protection districts;
- regional fire protection service authorities; and
- port district fire departments.

Each type of fire protection service provider operates within a specified jurisdiction and each has the authority to tax residents for the services provided. In addition, fire protection jurisdictions are authorized to enter into interlocal agreements among themselves in order to provide mutual aid outside of their customary jurisdictional boundaries.

Although the residents of every area of the state have the option of establishing a local fire protection service, the creation of such a service requires either a public vote or legislative action by the pertinent local government. Accordingly, due to inaction by either the resident voters or the local governing body, some areas of the state are not within the jurisdiction of any of the various fire protection service providers. In such areas, residents do not have access to publicly funded fire or emergency services.

Fire Protection Districts.

Fire protection districts are created to provide fire prevention, fire suppression, and emergency medical services within a district's boundaries, which can include incorporated and unincorporated areas. The creation of such districts requires voter approval. Generally, districts serve residents outside of cities or towns, except when cities and towns have been annexed into a district or when the district continues to provide service to a newly incorporated area. Fire protection districts are governed by an elected board of commissioners consisting of either three or five members. The districts finance their activities and facilities by imposing regular property taxes, excess voter-approved property tax levies, and benefit charges.

Regional Fire Protection Service Authorities.

A Regional Fire Protection Service Authority (Authority) may be created for the purpose of conducting specified fire protection functions at a regional level. An Authority may be created by the merger of two or more adjacent fire protection jurisdictions, including fire protection districts, cities, port districts, and Indian tribes. The creation of an authority requires voter approval and is governed by a board responsible for the execution of the regional fire protection service plan approved by the voters. A board is authorized to:

- levy and impose taxes;
- enter into intergovernmental agreements;
- acquire, hold, or dispose of real property;
- exercise the powers of eminent domain;
- enforce fire codes;
- accept grants and contributions to support the purposes of the Authority;

- monitor and audit the progress and execution of the Authority's programs and projects;
- enter into leases, contracts, and pay for services;
- hire and fire personnel; and
- exercise other powers and duties as are reasonably necessary to carry out its purposes.

An Authority may obtain revenues through property taxes which are based on the assessed value of taxable property within the Authority. An Authority may also obtain revenues through the imposition of a "benefits charge." Benefit charges are not based on the value of real property, but are instead linked to other factors such as insurance savings, water sources, or the distance from fire service facilities. An Authority may use this funding approach as a means for reducing property taxes and apportioning the costs of service in a manner that more accurately reflects the benefits delivered.

Forest Fire Protection Assessment.

Owners of forest land within a "forest protection zone" are required to provide adequate fire protection for such land consistent with statutory guidelines. If an owner of such forest land fails to do so, the Department of Natural Resources must provide the requisite fire protection and collect an annual assessment from the landowner to defray the cost of such fire protection services.

Summary of Substitute Bill:

Overview of the Act.

The act creates a new chapter in Title 52 RCW, which governs fire protection districts and Authorities. The stated intent of the act is to:

- authorize and facilitate the provision firefighting services to the residents of areas that are outside the jurisdictional boundaries of any fire protection service provider;
- coordinate firefighting services among the various fire protection service agencies throughout the state;
- enable cost recovery by fire protection service agencies with respect to the provision of services to unprotected areas; and
- clarify the nature of the tort liability faced by firefighters operating outside of their ordinary jurisdictional boundaries.

The act creates several statutory definitions, including the following:

- "Unprotected land" means improved property located outside of a fire protection jurisdiction.
- "Firefighting services" means the provision of fire prevention services, fire suppression services, emergency medical services, and other services necessary for the protection of life and property.
- "Fire protection service agency" or "agency" means any governmental entity responsible for the provision of firefighting services, including fire protection

districts, regional fire protection service authorities, cities, towns, port districts, and the Department of Natural Resources.

- "Improved property" means property containing structures, but excludes property devoted primarily to the commercial production of timber, livestock, or agricultural commodities.

Firefighting Services on Unprotected Land.

Property owners on unprotected land are encouraged to either form a local fire protection district or enter into an agreement with an established agency for the provision of fire protection services to such land.

Agencies are granted discretionary authority to provide fire protection services to unprotected lands, even if the property owner has not entered into an agreement for such protection.

Payment of Fire Protection Service Costs.

Agencies are authorized to collect reasonable costs from the owner of property on unprotected land for the provision of firefighting services to such land in the absence of an agreement regarding such services.

Agencies must utilize a standardized fee schedule in calculating reimbursement amounts for costs related to providing fire protection to unprotected lands that are not subject to a fire protection service agreement with the property owner.

Tort Immunity for Fire Protection Service Agencies.

An agency and its employees have broad tort immunity for acts or omissions in providing fire protection for unprotected lands.

Role of the Department of Natural Resources.

Authorizes the Department of Natural Resources to provide fire protection services to unprotected lands, but does not require the agency to protect buildings, structures, or other improvements located on such land.

Tribal Trust Lands.

Tribal trust lands are exempt from the provisions of the act.

Substitute Bill Compared to Original Bill:

The substitute bill deletes the provisions of the original bill and replaces them with a new statutory scheme designed to facilitate the provision of fire protection services to lands without access to such services and to provide immunity to firefighters providing fire protection outside of their jurisdictional boundaries.

A new chapter in Title 52 RCW is established that:

- defines "fire protection service agency" or "agency" to include any governmental entity responsible for the provision of firefighting services, including fire protection districts, regional fire protection service authorities, cities, towns, port districts, and the Department of Natural Resources;
- defines "unprotected land" to mean improved property located outside of a fire protection jurisdiction;
- encourages property owners on unprotected land to either form a local fire protection district or enter into an agreement with an established agency for the provision of fire protection services to such land;
- grants discretionary authority to agencies to provide fire protection services to unprotected lands even if the property owner has not entered into an agreement for such protection;
- provides an agency and its employees with broad tort immunity for acts or omissions in providing fire protection for unprotected lands;
- authorizes agencies to collect reasonable costs from the owner of property on unprotected land for the provision of firefighting services to such land in the absence of an agreement for the provision of such services;
- requires agencies to utilize a standardized fee schedule in calculating reimbursement amounts for costs related to providing fire protection to unprotected lands that are not subject to a fire protection agreement;
- authorizes the Department of Natural Resources to provide fire protection services to unprotected lands, but does not require the agency to protect buildings, structures, or other improvements located on such land; and
- exempts tribal trust lands from the provisions of the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill stems from a 50,000 acre range-land fire that occurred in an unprotected area near Yakima. There was significant property damage and one fatality. Coordinating firefighting services for this fire was problematic insofar as the law provides no mechanism for coordinating the provision of firefighting services on unprotected land. Some of the damage could probably have been avoided if the various responding agencies had explicit statutory guidance regarding fighting fires on property outside of their usual jurisdictional boundaries. This bill endeavors to address the issues that came to light as the result of this fire. The key issues relate to jurisdictional authority, response times, funding, and clarification of tort liability. If passed, this bill moves us closer to having a comprehensive fire control system for unprotected lands.

The key to successful fire fighting is having a quick response time. However, the lack of clear lines of jurisdictional authority impedes the ability of agencies to respond quickly to fires on unprotected land. The Department of Natural Resources (Department) should be included in the bill, but it must be clear that the Department does not, and cannot, protect improved property. The Department has only those resources necessary for fighting wildland fires, and has neither the trained personnel nor the equipment necessary to fight structural fires.

(With concerns) The bill should be amended to address the logistical problems faced by small agencies if called to respond to a fire outside of their usual jurisdictions. This can result in a lack of protection within the home jurisdiction. Funding is also a big issue. Also, this bill needs to be amended to eliminate county involvement in the process. The inclusion of county assessors in the funding processes is an error.

(Opposed) The bill should not focus on counties to administer a program for fighting fires on unprotected lands. Counties should be taken out of the equation altogether. Property owners should be able to individually contract with a fire protection agency for the provision of firefighting services to unprotected lands. Agencies should be authorized to assess firefighting fees based on a standardized schedule related to the level of risk involved. All funding issues should be channeled through the individual firefighting agencies.

Persons Testifying: (In support) Representative Chandler, prime sponsor; Joe Shramek, Department of National Resources; and Miland Walling, Washington Fire Commissioner Association.

(In support with concerns) R. Allen Walker, Yakima County Fire District.

(With concerns) Robert Carlton, Washington Association of County Officials.

(Opposed) Mike Brown, Washington Fire Chiefs.

Persons Signed In To Testify But Not Testifying: None.