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**Agriculture & Natural Resources  
Committee**

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**ESSB 5972**

**Brief Description:** Specifying recovery for fire damages to public or private forested lands.

**Sponsors:** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pearson, Rolfes, Hargrove, Mullet, Sheldon, Hewitt, Cleveland, Honeyford, Fain, Hill, Braun, Fraser, Litzow, Parlette, Frockt and Kline; by request of Commissioner of Public Lands).

**Brief Summary of Engrossed Substitute Bill**

- Creates an exclusive civil cause of action is against the owner of public or private forested land if a fire starts on or spreads from that land and causes damage to other forested lands.

**Hearing Date:** 2/21/14

**Staff:** Jason Callahan (786-7117).

**Background:**

Generally, liability for starting a forest fire or allowing a forest fire to spread from one's land is actionable in a tort lawsuit subject to the common law and judicial precedent. However, there are limited statutory exemptions from the common law. These exemptions do not, by their existence, diminish or eliminate common tort law relating to forest fires, but do limit the application of the common law in express circumstances (RCW 4.24.060).

One exemption from the common law is for an individual who starts a fire on his or her own land. In this circumstance, the land owner is held to a "prudent and careful" standard when it comes to ensuring that the fire does not spread and damage another person's property. If this standard is not met, and the property of another is damaged as a result, the originating landowner can be held liable for the full amount of all damages (RCW 4.24.040). Similarly, individuals

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involved with driving timber on waterways are entitled to kindle fires as necessary; however, in this circumstance, the standard applied is "the utmost caution" to prevent the spread of the fire and any resulting damage (RCW 4.24.050).

Likewise, a person whose negligence is responsible for the starting or existence of a fire is liable for any reasonable expenses of the responding fire agencies (RCW 76.04.495). This also applies if a person creates or allows an extreme fire hazard to exist prior to a fire spreading and an owner or possessor of property that has knowledge of a fire must make a reasonable effort to suppress the fire or incur liability for the fire suppression costs (RCW 76.04.750).

**Summary of Bill:**

A civil cause of action is created against the owner of public or private forested land from where a fire started or spread that caused damage to other forested lands. This cause of action is applicable regardless of whether the land where the fire originated, or the land where the damage occurred, is held in public or private ownership. The cause of action against the landowner must be brought in Superior Court and is the exclusive remedy available for damage to public or private lands resulting from fire.

The owner of the forested land where the fire originated or spread is only subject to liability if the action or inaction resulting in the starting or spreading of the fire constituted negligence or a higher degree of fault and the action or inaction was the proximate cause of the fire. If these two factors are met, then three specific available damages are provided. First, all reasonable expenses incurred to suppress the fire may be awarded to the landowner.

Second, the damaged landowner may be awarded either the reasonable cost of restoring the property or the difference in fair market value immediately before and after the fire. The value of the property must be documented by a state-certified real estate appraiser who identifies and analyzes all relevant characteristics of the land. This may include cultural, recreational, and environmental characteristics and uses as long as those characteristics contribute to the fair market value of the property based on the highest and best use.

Finally, an award can be made for all other objectively verifiable monetary loss. This can include losses such as loss of property use, loss of income, and loss of employment opportunities.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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