H-4207.2

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**SUBSTITUTE HOUSE BILL 2925**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Dent, Blake, McCabe, Schmick, Chandler, Short, Griffey, Johnson, Dye, Haler, and Springer)

AN ACT Relating to accessing land during a fire suppression response for the purpose of protecting livestock from a wildland fire; amending RCW 76.04.015 and 79.13.060; and adding a new section to chapter 76.04 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 76.04.015 and 2015 c 182 s 5 are each amended to read as follows:

(1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and, consistent with section 2 of this act, direct the work of suppressing forest fires;

(c)(i) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

(ii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if the evidence is used by the owner in conducting a business or in providing an electric utility service and the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

(iii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this subsection (3)(c)(iii) does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

(iv) Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state;

(f) Maximize the effective utilization of local fire suppression assets consistent with RCW 76.04.181; and

(g) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules consistent with this section for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timberlands within the state;

(ii) The extent to which timberlands are being destroyed by fire and the damage thereon;

(e) Provide fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by the department or another state agency, but only to the extent that providing these services does not interfere with or detract from the obligations set forth in subsection (3) of this section. If the department provides fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by another state agency, the department must be fully reimbursed for the work through a cooperative agreement as provided for in RCW 76.04.135(1).

(5) Any rules adopted under this section for the suppression of forest fires must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW 43.43.963, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(6) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest firefighting and patrol.

NEW SECTION. **Sec.**  A new section is added to chapter 76.04 RCW to read as follows:

(1)(a) The department must make every reasonable effort to accommodate a livestock owner's request to retrieve or care for animals in his or her charge that are at risk due to a wildfire.

(b) The department may only prohibit livestock owners, or qualified animal handling employees of a livestock owner, from retrieving or caring for livestock that are lawfully present on the public lands during any fire suppression response if doing so is necessary to prevent interference with a direct, active fire response.

(2) The department must incorporate the implementation of this section into any prefire season training or coordination conducted in local communities that contain active grazing areas.

(3)(a) The owner of livestock lawfully present on public lands assumes full liability for any damages incurred to himself or herself, and any employees or agents in his or her charge, if public lands are accessed to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question.

(b) No civil liability may be imposed by any court on the state, the department, or another subdivision of the state for any direct or indirect adverse impacts, including injury or death, resulting from a livestock owner, or the owner's employees or agents, accessing public lands to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question.

**Sec.**  RCW 79.13.060 and 2007 c 504 s 2 are each amended to read as follows:

(1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years;

(d) The lands may be leased for residential purposes not to exceed ninety-nine years; and

(e) The lands and development rights on state lands held for the benefit of the common schools may be leased to public agencies, as defined in RCW 79.17.200, not to exceed ninety‑nine years. The leases may include provisions for renewal of lease terms.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of the lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section.

(4) The department must include in the text of any grazing leases language that explains the right of access, and associated assumption of liability, created in section 2 of this act.

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