

ESHB 2093 - S COMM AMD

By Committee on Natural Resources & Parks

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.30
4 RCW under the subchapter heading "organization" to read as follows:

5 (1) The commissioner must appoint a local wildland fire liaison
6 that reports directly to the commissioner or the supervisor and
7 generally represents the interests and concerns of landowners and the
8 general public during any fire suppression activities of the
9 department.

10 (2) The role of the local wildland fire liaison is to provide
11 advice to the commissioner on issues such as access to land during
12 fire suppression activities, the availability of local fire
13 suppression assets, environmental concerns, and landowner interests.

14 (3) In appointing the local wildland fire liaison, the
15 commissioner must consult with county legislative authorities either
16 directly or through an organization that represents the interests of
17 county legislative authorities.

18 NEW SECTION. **Sec. 2.** (1) The local wildland fire liaison
19 created in section 1 of this act must prepare a report to the
20 commissioner of public lands by December 31, 2015, that provides
21 recommendations regarding:

22 (a) Opportunities for the department of natural resources to
23 increase training with local fire protection districts;

24 (b) The ability to quickly evaluate the availability of local
25 fire district resources in a manner that allows the local resources
26 to be more efficiently and effectively dispatched to wildland fires;
27 and

28 (c) Opportunities to increase and maintain the viability of local
29 fire suppression assets.

30 (2) The department of natural resources must issue a report to
31 the legislature consistent with RCW 43.01.036 by October 31, 2016,
32 that summarizes the recommendations of the local wildland fire

1 liaison, details steps taken to implement the recommendations, and
2 offers an analyses of the results on the ground.

3 (3) This section expires July 1, 2017.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.04
5 RCW under the subchapter heading "administration" to read as follows:

6 (1) The commissioner must appoint and maintain a wildland fire
7 advisory committee to generally advise the commissioner on all
8 matters related to wildland firefighting in the state. This includes,
9 but is not limited to, developing recommendations regarding
10 department capital budget requests related to wildland firefighting
11 and developing strategies to enhance the safe and effective use of
12 private and public wildland firefighting resources.

13 (2) The commissioner may appoint members to the wildland fire
14 advisory committee as the commissioner determines is the most helpful
15 in the discharge of the commissioner's duties. However, at a minimum,
16 the commissioner must invite the following:

17 (a) Two county commissioners, one from east of the crest of the
18 Cascade mountains and one from west of the crest of the Cascade
19 mountains;

20 (b) Two owners of industrial land, one an owner of timberland and
21 one an owner of rangeland;

22 (c) The state fire marshal or a representative of the state fire
23 marshal's office;

24 (d) Two individuals with the title of fire chief, one from a
25 community located east of the crest of the Cascade mountains and one
26 from a community located west of the crest of the Cascade mountains;

27 (e) An individual with the title of fire commissioner whose
28 authority is pursuant to chapter 52.14 RCW;

29 (f) A representative of a federal wildland firefighting agency;

30 (g) A representative of a tribal nation;

31 (h) A representative of a statewide environmental organization;

32 (i) A representative of a state land trust beneficiary; and

33 (j) A small forest landowner.

34 (3) The local wildland fire liaison serves as the administrative
35 chair for the wildland fire advisory committee.

36 (4) The department must provide staff support for all committee
37 meetings.

38 (5) The wildland fire advisory committee must meet at the call of
39 the administrative chair for any purpose that directly relates to the

1 duties set forth in subsection (1) of this section or as is otherwise
2 requested by the commissioner or the administrative chair.

3 (6) Each member of the wildland fire advisory committee serves
4 without compensation but may be reimbursed for travel expenses as
5 authorized in RCW 43.03.050 and 43.03.060.

6 (7) The members of the wildland fire advisory committee, or
7 individuals acting on their behalf, are immune from civil liability
8 for official acts performed in the course of their duties.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.04
10 RCW to read as follows:

11 (1)(a) An individual may, consistent with this section, enter
12 privately owned or publicly owned land for the purposes of attempting
13 to extinguish or control a wildland fire, regardless of whether the
14 individual owns the land, when fighting the wildland fire in that
15 particular time and location can be reasonably considered a public
16 necessity due to an imminent danger.

17 (b) No civil or criminal liability may be imposed by any court on
18 an individual acting pursuant to this section for any direct or
19 proximate adverse impacts resulting from an individual's access to
20 land for the purposes of attempting to extinguish or control a
21 wildland fire when fighting the wildland fire in that particular time
22 and location can be reasonably considered a public necessity, except
23 upon proof of gross negligence or willful or wanton misconduct by the
24 individual.

25 (c) An individual may enter land under this subsection (1) only
26 if:

27 (i) There is an active fire on or in near proximity to the land;

28 (ii) The individual has a reasonable belief that the local fire
29 conditions are creating an emergency situation and that there is an
30 imminent danger of a fire growing or spreading to or from the parcel
31 of land being entered;

32 (iii) The individual has a reasonable belief that preventive
33 measures will extinguish or control the wildfire;

34 (iv) The individual has a reasonable belief that he or she is
35 capable of taking preventive measures;

36 (v) The individual only undertakes measures that are reasonable
37 and necessary until professional wildfire suppression personnel
38 arrives;

1 (vi) The individual does not continue to take suppression actions
2 after specific direction to cease from the landowner;

3 (vii) The individual takes preventive measures only for the
4 period of time until efforts to control the wildfire have been
5 assumed by professional wildfire suppression personnel, unless
6 explicitly authorized by professional wildland firefighting personnel
7 to remain engaged in suppressing the fire;

8 (viii) The individual follows the instructions of professional
9 wildland firefighting personnel, including ceasing to engage in
10 firefighting activities, when directed to do so by professional
11 wildland firefighting personnel; and

12 (ix) The individual promptly notifies emergency personnel and the
13 landowner, lessee, or occupant prior to entering the land or within a
14 reasonable time after the individual attempts to extinguish or
15 control the wildland fire.

16 (d) Nothing in this section authorizes any person to materially
17 benefit from accessing land or retain any valuable materials that may
18 be collected or harvested during the time the individual attempts to
19 extinguish or control the wildland fire.

20 (e)(i) The authority to enter privately owned or publicly owned
21 land under this subsection (1) is limited to the minimum necessary
22 activities reasonably required to extinguish or control the wildland
23 fire.

24 (ii) Activities that may be reasonable under this subsection (1)
25 include, but are not limited to: Using hand tools to clear the ground
26 of debris, operating readily available water hoses, clearing
27 flammable materials from the vicinity of structures, cutting fire
28 lines with heavy earthmoving equipment, using falling timber as a
29 firefighting technique, unlocking or opening gates to assist
30 firefighter access, and safely scouting and reporting fire behavior.

31 (iii) Activities that do not fall within the scope of this
32 subsection (1)(e), due to the high potential for adverse
33 consequences, include, but are not limited to: Lighting a fire in an
34 attempt to stop the spread of another fire; using explosives as a
35 firefighting technique; using aircraft for fire suppression; and
36 directing other individuals to engage in firefighting.

37 (f) Nothing in this subsection (1) confers a legal or civil duty
38 or obligation on a person to attempt to extinguish or control a
39 wildfire.

1 (2)(a) No civil or criminal liability may be imposed by any court
2 on the owner, lessee, or occupant of any land accessed as permitted
3 under subsection (1) of this section for any direct or proximate
4 adverse impacts resulting from the access to privately owned or
5 publicly owned land allowed under subsection (1) of this section,
6 except upon proof of willful or wanton misconduct by the owner,
7 lessee, or occupant. The barriers to civil and criminal liability
8 imposed by this subsection include, but are not limited to, impacts
9 on:

10 (i) The individual accessing the privately owned or publicly
11 owned land and the individual's personal property, including loss of
12 life;

13 (ii) Any structures or land alterations constructed by
14 individuals entering the privately owned or publicly owned land;

15 (iii) Other landholdings; and

16 (iv) Overall environmental resources.

17 (b) This subsection (2) does not apply in any case where
18 liability for damages is provided under RCW 4.24.040.

19 (3) Nothing in this section limits or otherwise effects any other
20 statutory or common law provisions relating to land access or the
21 control of a conflagration.

22 **Sec. 5.** RCW 76.04.015 and 2012 c 38 s 1 are each amended to read
23 as follows:

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

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

30 (3) The department shall:

31 (a) Enforce all laws within this chapter;

32 (b) Be empowered to take charge of and direct the work of
33 suppressing forest fires;

34 (c)(i) Investigate the origin and cause of all forest fires to
35 determine whether either a criminal act or negligence by any person,
36 firm, or corporation caused the starting, spreading, or existence of
37 the fire. In conducting investigations, the department shall work
38 cooperatively, to the extent possible, with utilities, property
39 owners, and other interested parties to identify and preserve

1 evidence. Except as provided otherwise in this subsection, the
2 department in conducting investigations is authorized, without court
3 order, to take possession or control of relevant evidence found in
4 plain view and belonging to any person, firm, or corporation. To the
5 extent possible, the department shall notify the person, firm, or
6 corporation of its intent to take possession or control of the
7 evidence. The person, firm, or corporation shall be afforded
8 reasonable opportunity to view the evidence and, before the
9 department takes possession or control of the evidence, also shall be
10 afforded reasonable opportunity to examine, document, and photograph
11 it. If the person, firm, or corporation objects in writing to the
12 department's taking possession or control of the evidence, the
13 department must either return the evidence within seven days after
14 the day on which the department is provided with the written
15 objections or obtain a court order authorizing the continued
16 possession or control.

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

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

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

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

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

1 (f) Maximize the effective utilization of local fire suppression
2 assets consistent with section 6 of this act; and

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

5 (4) The department may:

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

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

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

16 (d) Inquire into:

17 (i) The extent, kind, value, and condition of all timber lands
18 within the state;

19 (ii) The extent to which timber lands are being destroyed by fire
20 and the damage thereon;

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

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

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

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.04
8 RCW to read as follows:

9 (1) To maximize the effective utilization of local fire
10 suppression assets, the department is required to:

11 (a) Compile and annually update master lists of qualified
12 wildland fire suppression contractors who have valid incident
13 qualifications for the kind of contracted work to be performed. In
14 order to be included on a master list of qualified wildland fire
15 suppression contractors:

16 (i) Contractors providing fire engines, tenders, crews, or
17 similar resources must have training and qualifications sufficient
18 for federal wildland fire contractor eligibility, including
19 possessing a valid incident qualification card, commonly called a red
20 card; and

21 (ii) Contractors other than those identified in (a)(i) of this
22 subsection must have training and qualifications evidenced by
23 possession of a valid department qualification and safety document,
24 commonly called a blue card, issued to people cooperating with the
25 department pursuant to an agreement;

26 (b) Provide timely advance notification of the dates and
27 locations of department blue card training to all potential wildland
28 fire suppression contractors known to the department and make the
29 training available in several locations that are reasonably
30 convenient for contractors;

31 (c) Make the lists of qualified wildland fire suppression
32 contractors available to county legislative authorities, emergency
33 management departments, and local fire districts;

34 (d) Cooperate with federal wildland firefighting agencies to
35 maximize, based on predicted need, the efficient use of local
36 resources in close proximity to wildland fire incidents;

37 (e) Enter into preemptive agreements with landowners in
38 possession of firefighting capability that may be utilized in
39 wildland fire suppression efforts, including the use of bulldozers,

1 fallers, fuel tenders, potable water tenders, water sprayers, wash
2 trailers, refrigeration units, and buses; and

3 (f) Conduct outreach to provide basic incident command system and
4 wildland fire safety training to landowners in possession of
5 firefighting capability to help ensure that any wildland fire
6 suppression actions taken by private landowners on their own land are
7 accomplished safely and in coordination with any related incident
8 command structure.

9 (2) Nothing in subsection (1) of this section prohibits the
10 department from conducting condensed safety training on the site of a
11 wildland fire in order to utilize available contractors not included
12 on a master list of qualified wildland fire suppression contractors.

13 (3) When entering into preemptive agreements with landowners
14 under this section, the department must ensure that:

- 15 (a) All equipment and personnel satisfy department standards; and
16 (b) All contractors are, when engaged in fire suppression
17 activities, under the supervision of recognized wildland fire
18 personnel.

19 (4) No civil liability may be imposed by any court on the state
20 or its officers and employees for any adverse impacts resulting from
21 training provided by the department or preemptive agreements entered
22 into by the department under the provisions of this section except
23 upon proof of gross negligence or willful or wanton misconduct.

24 **Sec. 7.** RCW 76.04.005 and 2014 c 90 s 1 are each reenacted and
25 amended to read as follows:

26 As used in this chapter, the following terms have the meanings
27 indicated unless the context clearly requires otherwise.

28 (1) "Additional fire hazard" means a condition existing on any
29 land in the state:

30 (a) Covered wholly or in part by forest debris which is likely to
31 further the spread of fire and thereby endanger life or property; or

32 (b) When, due to the effects of disturbance agents, broken, down,
33 dead, or dying trees exist on forest land in sufficient quantity to
34 be likely to further the spread of fire within areas covered by a
35 forest health hazard warning or order issued by the commissioner of
36 public lands under RCW 76.06.180. The term "additional fire hazard"
37 does not include green trees or snags left standing in upland or
38 riparian areas under the provisions of RCW 76.04.465 or chapter 76.09
39 RCW.

1 (2) "Closed season" means the period between April 15th and
2 October 15th, unless the department designates different dates
3 because of prevailing fire weather conditions.

4 (3) "Department" means the department of natural resources, or
5 its authorized representatives, as defined in chapter 43.30 RCW.

6 (4) "Department protected lands" means all lands subject to the
7 forest protection assessment under RCW 76.04.610 or covered under
8 contract or agreement pursuant to RCW 76.04.135 by the department.

9 (5) "Disturbance agent" means those forces that damage or kill
10 significant numbers of forest trees, such as insects, diseases, wind
11 storms, ice storms, and fires.

12 (6) "Emergency fire costs" means those costs incurred or approved
13 by the department for emergency forest fire suppression, including
14 the employment of personnel, rental of equipment, and purchase of
15 supplies over and above costs regularly budgeted and provided for
16 nonemergency fire expenses for the biennium in which the costs occur.

17 (7) "Exploding target" means a device that is designed or
18 marketed to ignite or explode when struck by firearm ammunition or
19 other projectiles.

20 (8) "Forest debris" includes forest slash, chips, and any other
21 vegetative residue resulting from activities on forest land.

22 (9) "Forest fire service" includes all wardens, rangers, and
23 other persons employed especially for preventing or fighting forest
24 fires.

25 (10) "Forest land" means any unimproved lands which have enough
26 trees, standing or down, or flammable material, to constitute in the
27 judgment of the department, a fire menace to life or property.
28 Sagebrush and grass areas east of the summit of the Cascade mountains
29 may be considered forest lands when such areas are adjacent to or
30 intermingled with areas supporting tree growth. Forest land, for
31 protection purposes, does not include structures.

32 (11) "Forest landowner," "owner of forest land," "landowner," or
33 "owner" means the owner or the person in possession of any public or
34 private forest land.

35 (12) "Forest material" means forest slash, chips, timber,
36 standing or down, or other vegetation.

37 (13) "Incendiary ammunition" means ammunition that is designed to
38 ignite or explode upon impact with or penetration of a target or
39 designed to trace its course in the air with a trail of smoke,
40 chemical incandescence, or fire.

1 (14) "Landowner operation" means every activity, and supporting
2 activities, of a forest landowner and the landowner's agents,
3 employees, or independent contractors or permittees in the management
4 and use of forest land subject to the forest protection assessment
5 under RCW 76.04.610 for the primary benefit of the owner. The term
6 includes, but is not limited to, the growing and harvesting of forest
7 products, the development of transportation systems, the utilization
8 of minerals or other natural resources, and the clearing of land. The
9 term does not include recreational and/or residential activities not
10 associated with these enumerated activities.

11 (15) "Participating landowner" means an owner of forest land
12 whose land is subject to the forest protection assessment under RCW
13 76.04.610.

14 (16) "Sky lantern" means an unmanned self-contained luminary
15 device that uses heated air produced by an open flame or produced by
16 another source to become or remain airborne.

17 (17) "Slash" means organic forest debris such as tree tops,
18 limbs, brush, and other dead flammable material remaining on forest
19 land as a result of a landowner operation.

20 (18) "Slash burning" means the planned and controlled burning of
21 forest debris on forest lands by broadcast burning, underburning,
22 pile burning, or other means, for the purposes of silviculture,
23 hazard abatement, or reduction and prevention or elimination of a
24 fire hazard.

25 (19) "Suppression" means all activities involved in the
26 containment and control of forest fires, including the patrolling
27 thereof until such fires are extinguished or considered by the
28 department to pose no further threat to life or property.

29 (20) "Unimproved lands" means those lands that will support
30 grass, brush and tree growth, or other flammable material when such
31 lands are not cleared or cultivated and, in the opinion of the
32 department, are a fire menace to life and property.

33 (21) "Commissioner" means the commissioner of public lands.

34 (22) "Local fire suppression assets" means firefighting equipment
35 that is located in close proximity to the wildland fire and that
36 meets department standards and requirements.

37 (23) "Local wildland fire liaison" means the person appointed by
38 the commissioner to serve as the local wildland fire liaison as
39 provided in section 1 of this act."

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1 On page 1, line 1 of the title, after "suppression;" strike the
2 remainder of the title and insert "amending RCW 76.04.015; reenacting
3 and amending RCW 76.04.005; adding a new section to chapter 43.30
4 RCW; adding new sections to chapter 76.04 RCW; creating a new
5 section; and providing an expiration date."

EFFECT: Adds cutting fire lines with heavy earthmoving equipment and using falling timber as a firefighting technique to the nonexclusive list of reasonable activities allowed on public or private lands to control or extinguish wildland fire.

--- END ---