

ESHB 2093 - S COMM AMD
By Committee on Ways & Means

ADOPTED 4/13/2015

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 (4) All requirements in this section are subject to the
19 availability of amounts appropriated for the specific purposes
20 described.

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

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

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

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

1 (2) The department of natural resources must issue a report to
2 the legislature consistent with RCW 43.01.036 by October 31, 2016,
3 that summarizes the recommendations of the local wildland fire
4 liaison, details steps taken to implement the recommendations, and
5 offers an analyses of the results on the ground.

6 (3) All requirements in this section are subject to the
7 availability of amounts appropriated for the specific purposes
8 described.

9 (4) This section expires July 1, 2017.

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

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

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

23 (a) Two county commissioners, one from east of the crest of the
24 Cascade mountains and one from west of the crest of the Cascade
25 mountains;

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

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

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

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

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

36 (g) A representative of a tribal nation;

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

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

39 (j) A small forest landowner.

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

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

5 (5) The wildland fire advisory committee must meet at the call of
6 the administrative chair for any purpose that directly relates to the
7 duties set forth in subsection (1) of this section or as is otherwise
8 requested by the commissioner or the administrative chair.

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

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

15 (8) All requirements in this section are subject to the
16 availability of amounts appropriated for the specific purposes
17 described.

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

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

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

34 (c) An individual may enter land under this subsection (1) only
35 if:

36 (i) There is an active fire on or in near proximity to the land;
37 (ii) The individual has a reasonable belief that the local fire
38 conditions are creating an emergency situation and that there is an

1 imminent danger of a fire growing or spreading to or from the parcel
2 of land being entered;

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

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

7 (v) The individual only undertakes measures that are reasonable
8 and necessary until professional wildfire suppression personnel
9 arrives;

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

12 (vii) The individual takes preventive measures only for the
13 period of time until efforts to control the wildfire have been
14 assumed by professional wildfire suppression personnel, unless
15 explicitly authorized by professional wildland firefighting personnel
16 to remain engaged in suppressing the fire;

17 (viii) The individual follows the instructions of professional
18 wildland firefighting personnel, including ceasing to engage in
19 firefighting activities, when directed to do so by professional
20 wildland firefighting personnel; and

21 (ix) The individual promptly notifies emergency personnel and the
22 landowner, lessee, or occupant prior to entering the land or within a
23 reasonable time after the individual attempts to extinguish or
24 control the wildland fire.

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

29 (e)(i) The authority to enter privately owned or publicly owned
30 land under this subsection (1) is limited to the minimum necessary
31 activities reasonably required to extinguish or control the wildland
32 fire.

33 (ii) Activities that may be reasonable under this subsection (1)
34 include, but are not limited to: Using hand tools to clear the ground
35 of debris, operating readily available water hoses, clearing
36 flammable materials from the vicinity of structures, unlocking or
37 opening gates to assist firefighter access, and safely scouting and
38 reporting fire behavior.

39 (iii) Activities that do not fall within the scope of this
40 subsection (1)(e), due to the high potential for adverse

1 consequences, include, but are not limited to: Lighting a fire in an
2 attempt to stop the spread of another fire; using explosives as a
3 firefighting technique; using aircraft for fire suppression; and
4 directing other individuals to engage in firefighting.

5 (f) Nothing in this subsection (1) confers a legal or civil duty
6 or obligation on a person to attempt to extinguish or control a
7 wildfire.

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

17 (i) The individual accessing the privately owned or publicly
18 owned land and the individual's personal property, including loss of
19 life;

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

22 (iii) Other landholdings; and

23 (iv) Overall environmental resources.

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

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

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

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

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

37 (3) The department shall:

38 (a) Enforce all laws within this chapter;

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

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

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

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

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

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

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

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

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

13 (4) The department may:

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

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

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

24 (d) Inquire into:

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

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

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

38 (5) Any rules adopted under this section for the suppression of
39 forest fires must include a mechanism by which a local fire
40 mobilization radio frequency, consistent with RCW 43.43.963, is

1 identified and made available during the initial response to any
2 forest fire that crosses jurisdictional lines so that all responders
3 have access to communications during the response. Different initial
4 response frequencies may be identified and used as appropriate in
5 different geographic response areas. If the fire radio communication
6 needs escalate beyond the capability of the identified local radio
7 frequency, the use of other available designated interoperability
8 radio frequencies may be used.

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

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

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

19 (a) Compile and annually update master lists of qualified
20 wildland fire suppression contractors who have valid incident
21 qualifications for the kind of contracted work to be performed. In
22 order to be included on a master list of qualified wildland fire
23 suppression contractors:

24 (i) Contractors providing fire engines, tenders, crews, or
25 similar resources must have training and qualifications sufficient
26 for federal wildland fire contractor eligibility, including
27 possessing a valid incident qualification card, commonly called a red
28 card; and

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

34 (b) Provide timely advance notification of the dates and
35 locations of department blue card training to all potential wildland
36 fire suppression contractors known to the department and make the
37 training available in several locations that are reasonably
38 convenient for contractors;

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

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

7 (e) Enter into preemptive agreements with landowners in
8 possession of firefighting capability that may be utilized in
9 wildland fire suppression efforts, including the use of bulldozers,
10 fallers, fuel tenders, potable water tenders, water sprayers, wash
11 trailers, refrigeration units, and buses; and

12 (f) Conduct outreach to provide basic incident command system and
13 wildland fire safety training to landowners in possession of
14 firefighting capability to help ensure that any wildland fire
15 suppression actions taken by private landowners on their own land are
16 accomplished safely and in coordination with any related incident
17 command structure.

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

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

24 (a) All equipment and personnel satisfy department standards; and

25 (b) All contractors are, when engaged in fire suppression
26 activities, under the supervision of recognized wildland fire
27 personnel.

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

33 (5) All requirements in this section are subject to the
34 availability of amounts appropriated for the specific purposes
35 described.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (10) "Forest land" means any unimproved lands which have enough
38 trees, standing or down, or flammable material, to constitute in the
39 judgment of the department, a fire menace to life or property.
40 Sagebrush and grass areas east of the summit of the Cascade mountains

1 may be considered forest lands when such areas are adjacent to or
2 intermingled with areas supporting tree growth. Forest land, for
3 protection purposes, does not include structures.

4 (11) "Forest landowner," "owner of forest land," "landowner," or
5 "owner" means the owner or the person in possession of any public or
6 private forest land.

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

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

13 (14) "Landowner operation" means every activity, and supporting
14 activities, of a forest landowner and the landowner's agents,
15 employees, or independent contractors or permittees in the management
16 and use of forest land subject to the forest protection assessment
17 under RCW 76.04.610 for the primary benefit of the owner. The term
18 includes, but is not limited to, the growing and harvesting of forest
19 products, the development of transportation systems, the utilization
20 of minerals or other natural resources, and the clearing of land. The
21 term does not include recreational and/or residential activities not
22 associated with these enumerated activities.

23 (15) "Participating landowner" means an owner of forest land
24 whose land is subject to the forest protection assessment under RCW
25 76.04.610.

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

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

32 (18) "Slash burning" means the planned and controlled burning of
33 forest debris on forest lands by broadcast burning, underburning,
34 pile burning, or other means, for the purposes of silviculture,
35 hazard abatement, or reduction and prevention or elimination of a
36 fire hazard.

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

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

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

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

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

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By Committee on Ways & Means

ADOPTED 4/13/2015

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

EFFECT: Makes the requirements of the bill contingent upon
funding.

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