

HOUSE BILL REPORT

ESHB 2093

As Passed House:
March 10, 2015

Title: An act relating to wildland fire suppression.

Brief Description: Concerning wildland fire suppression.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Short, Blake, Buys and Condotta).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/17/15, 2/19/15 [DPS];

Appropriations: 2/26/15, 2/27/15 [DPS(AGNR)].

Floor Activity:

Passed House: 3/10/15, 97-0.

Brief Summary of Engrossed Substitute Bill

- Requires the Commissioner of Public Lands (Commissioner) to appoint a wildland fire liaison who generally represents the interests and concerns of landowners and the public during fire suppression activities of the Department of Natural Resources (DNR).
- Requires the Commissioner to appoint and maintain a Wildland Fire Advisory Committee to advise the Commissioner on all matters related to wildland firefighting in the state.
- Authorizes a person to enter public or private land, subject to restrictions, in order to extinguish or control a wildland fire when fighting the wildland fire is a public necessity due to an imminent danger.
- Requires the DNR to compile and annually update master lists of qualified fire suppression contractors who have valid incident qualifications for the type of work to be performed; make the lists available to county legislative authorities, emergency management departments, and local fire districts; and enter into preemptive agreements with landowners in possession of firefighting capability that may be used in wildland fire suppression efforts.

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.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Dunshee, Kretz, Orcutt, Pettigrew, Schmick, Stanford and Van De Wege.

Staff: Peter Clodfelter (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives G. Hunt and Taylor.

Staff: Dan Jones (786-7118).

Background:

Wildland Fire Suppression.

There is a duty on landowners and on people engaged in activity on land who have knowledge of a wildland fire to make every reasonable effort to suppress the wildland fire. That duty applies regardless of the origin or spread of the wildland fire. If a person does not suppress a wildland fire, the Department of Natural Resources (DNR) is required to summarily suppress it. If a wildland fire occurs in a land clearing, right-of-way clearing, or landowner operation, the wildland fire must be fought to the full limit of available employees and equipment.

Also, when in the state's best interest and for the purposes of forest firefighting and patrol, the DNR may cooperate with any agency of another state, the United States or a federal agency, and any county, town, corporation, person, or native American tribe. Further, the DNR may contract and enter agreements with private corporations for the protection and development of the forest lands within the state.

Trespassing on Public or Private Land.

A person may be liable to the state for damages and prosecuted criminally for cutting, removing, or damaging timber from state lands, using or occupying state lands, removing any valuable material from state lands, causing waste or damage to state lands, or for related acts. Also, a person may be liable criminally and civilly for trespassing on private land.

Summary of Engrossed Substitute Bill:

Local Wildland Fire Liaison.

The Commissioner of Public Lands (Commissioner) is required to appoint a local wildland fire liaison (Liaison) who reports directly to the Commissioner or the Department of Natural Resource's (DNR) supervisor and generally represents the interests and concerns of landowners and the public during fire suppression activities of the DNR. The Liaison is to provide advice to the Commissioner on issues like access to land during fire suppression activities, the availability of local fire suppression assets, environmental concerns, and landowner interests. The Commissioner is required to consult with county legislative authorities while appointing the Liaison.

The Liaison is required to prepare a report to the Commissioner by December 31, 2015. The report must contain recommendations about things like opportunities for the DNR to increase training with local fire protection districts, the ability to quickly evaluate the availability of local fire district resources to allow the local resources to be more efficiently and effectively dispatched to wildland fires, and ways to increase and maintain the viability of local fire suppression assets. The DNR is then required to submit a report to the Legislature by October 31, 2016, that summarizes the Liaison's recommendations, explains the steps the DNR took to implement the recommendations, and offers analyses of the results.

Wildland Fire Advisory Committee.

The Commissioner is required to appoint and maintain a Wildland Fire Advisory Committee (Committee) to advise the Commissioner on all matters related to wildland firefighting in the state. This includes, but is not limited to, developing recommendations regarding department capital budget requests related to wildland firefighting and developing strategies to enhance the safe and effective use of private and public wildland firefighting resources. Generally, the Commissioner has discretion to appoint members as the Commissioner determines is most helpful. However, the Commissioner is required to invite at least the following people:

- two county commissioners—one from east of the crest of the Cascade mountains and one from west of the crest of the Cascade mountains;
- two owners of industrial land—one owner of timberland and one owner of rangeland;
- the State Fire Marshal or a representative of the State Fire Marshal's Office;
- two individuals with the title of fire chief—one from a community located east of the crest of the Cascade mountains and one from a community located west of the crest of the Cascade mountains;
- one individual with the title of fire commissioner;
- one small forest landowner; and
- one representative from each of the following: (1) a federal wildland firefighting agency; (2) a tribal nation; (3) a statewide environmental organization; and (4) a state land trust beneficiary.

The Liaison serves as the administrative chair for the Committee and the DNR is required to provide staff support for all committee meetings. Generally, the Committee meets at the call of the chair and each member serves without compensation. Members are generally immune from civil liability for official actions.

Entering Public or Private Land to Suppress or Control a Wildland Fire.

Person Accessing Land. A person is authorized, although not required, to enter public or private land in order to extinguish or control a wildland fire when fighting the wildland fire

in that particular time and location can be reasonably considered a public necessity due to an imminent danger. No civil or criminal liability may be imposed by any court for any direct or proximate adverse impacts resulting from a person's access to land for the purposes of attempting to extinguish or control a wildland fire in that circumstance, except upon proof of gross negligence or willful or wanton misconduct by the person.

In order for a person to lawfully access public or private land to suppress a wildland fire, all of the following conditions must exist:

- there is an active fire on or in near proximity to the land;
- the person has a reasonable belief that the local fire conditions are creating an emergency situation and that there is an imminent danger of a fire growing or spreading to or from the parcel of the land being entered;
- the person has a reasonable belief that preventive measures will extinguish or control the wildfire;
- the person has a reasonable belief that he or she is capable of taking preventive measures;
- the person only undertakes measures that are reasonable and necessary until professional wildfire suppression personnel arrives;
- the person does not continue to take suppression actions after specific direction to cease from the landowner;
- the person follows the instructions of professional wildfire fighting personnel, including ceasing to engage in firefighting activities, when directed to do so by professional fire suppression personnel; and
- the person promptly notifies emergency personnel and the landowner, lessee, or occupant prior to entering the land or within a reasonable time after the individual attempts to extinguish or control the wildland fire.

Additionally, a person may not materially benefit or retain any valuable materials from access to the public or private land. Further, any authority to enter public or private land is limited to the minimum necessary activities reasonably required to extinguish or control the wildland fire. Examples of activities that may be reasonable include, but are not limited to, using hand tools to clear the ground of debris, operating readily available water hoses, clearing flammable materials from the vicinity of structures, unlocking or opening gates to assist firefighter access, and safely scouting and reporting fire behavior. Activities that are prohibited include lighting a fire in an attempt to stop the spread of another fire, using explosives as a firefighting technique, using aircraft for fire suppression, and directing other people to engage in firefighting.

Landowner. No civil or criminal liability may be imposed on the owner, lessee, or occupant of any land accessed for purposes of fire suppression activities as described above for any direct or proximate adverse impacts resulting from the access to privately owned or publicly owned land, except upon proof of willful or wanton misconduct by the owner, lessee, or occupant. The barrier to liability includes, but is not limited to, impacts on the person accessing the privately owned or publicly owned land and the person's personal property, including loss of life, any structures or land alterations constructed by individuals entering the privately owned or publicly owned land, other landholdings, and overall environmental resources. However, the barrier to liability does not include an action against an owner, lessee, or occupant for negligently permitting fire to spread.

Department of Natural Resources Master Contractor List.

In order to maximize the effective utilization of local fire suppression assets, the DNR is required to: (1) compile and update, annually, master lists of qualified fire suppression contractors who have valid incident qualifications for the kind of contracted work to be performed, which for contractors providing fire engines, tenders, crews, or similar resources is a valid incident qualification card, commonly called a Red Card, and for contractors providing other types of support is a DNR qualification and safety document, commonly called a Blue Card, and make the lists available to county legislative authorities, emergency management departments, and local fire districts; (2) cooperate with federal wildland firefighting agencies to maximize the efficient use of local resources in close proximity to wildland fire incidents; (3) enter into preemptive agreements with landowners in possession of firefighting capability that may be used in wildland fire suppression efforts, including bulldozers, fallers, fuel tenders, potable water tenders, water sprayers, wash trailers, refrigeration units, and buses; and (4) reach out to provide basic incident command system and wildland fire safety training to landowners in possession of firefighting capability to help ensure that any wildland fire suppression actions private landowners take on their own land are accomplished safely and in coordination with any related incident command structure.

When entering into those types of preemptive agreements with landowners, the DNR is required to ensure that all equipment and personnel satisfy the DNR's standards and that all contractors are under the supervision of recognized wildland fire personnel while engaged in fire suppression activities. The DNR may not be held civilly liable for any adverse impacts resulting from training provided by the DNR or preemptive agreements entered into by the DNR except upon proof of gross negligence or willful or wanton misconduct.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) This bill draws on ideas from the several fire bills that are currently before the House Agriculture and Natural Resources Committee and other committees and is the result of input from groups like firefighters, the Department of Natural Resources (DNR), and local government representatives. Numerous interests share the desire to have safe and effective wildland firefighting and those interests support this bill. Concerns raised by the other fire-related bills are addressed in this bill. For example, the bill provides for increased coordination at the local level, it allows for increased involvement of local contractors, and it allows for a person to enter public or private land in order to safely suppress or control a wildland fire. The bill incorporates key parts of other fire bills, with minor modifications. Although some people are skeptical about the effectiveness of creating a new advisory committee, people are hoping that the advisory committee can help the DNR better respond to wildland fires. Overall, the bill provides people with more tools to use during wildland fire suppression activities this summer and it would help raise awareness of the existence of

preemptive agreements that people with fire suppression equipment can enter with the DNR so that people's equipment can be more efficiently used in fire suppression.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) There have been tremendous wildfires around the state, particularly in Okanogan County, over the last several decades. After a fire, there is typically work in legislative committees to fix what went wrong, but most of the issues have not yet been fixed. This bill would provide some legislative direction, and local firefighters, agencies, and other stakeholders put a lot of work into it. The bill has some costs, but they are small in comparison to the fire suppression costs that came out of the Carlton Complex fire. Common sense tells us that you should take advantage of the people who are closest to the fire and equipped to deal with it, and the bill would improve first response work. The Carlton Complex fire could have been stopped multiple times when it was small. Once a fire gets to a certain size, you aren't going to be able to stop it. However, there was an amendment in committee that removed some of the intent by ruling out some of the first responders, which is an issue that should be addressed on the floor.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): Representative Kretz, prime sponsor; Mary Verner, Washington Department of Natural Resources; Seamus Petrie, Washington Public Employees Association; and Michael Temple, Washington State Association for Justice.

Persons Testifying (Appropriations): Representative Kretz, prime sponsor; and Seamus Petrie, Washington Public Employees Association.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.