

SENATE BILL REPORT

ESHB 2093

As of April 6, 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: Passed House: 3/10/15, 97-0.

Committee Activity: Natural Resources & Parks: 3/18/15, 3/25/15 [DPA-WM].
Ways & Means: 4/06/15.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Chair; Dansel, Vice Chair; Hatfield, Ranking Minority Member; Chase, Hewitt, McAuliffe and Warnick.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: Wildland Fire Suppression. Landowners and people engaged in activity on land who have knowledge of a wildland fire have a duty to make every reasonable effort to suppress the wildland fire regardless of the origin or spread of the wildland fire. If a wildland fire occurs in a land clearing, right-of-way clearing, or landowner operation, it must be fought to the full limit of available employees and equipment. If a person does not suppress a wildland fire, the Department of Natural Resources (DNR) must suppress it. DNR may coordinate with governmental agencies and tribes and contract 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 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 trespassing on private land.

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.

Summary of Bill (Recommended Amendments): Local Wildland Fire Liaison (Liaison). The Commissioner of Public Lands (Commissioner), in consultation with county legislative authorities, must appoint a Liaison to represent the interests of landowners and the public during DNR fire suppression activities. The Liaison must advise the Commissioner on issues such as land access, availability of local fire suppression assets, and environmental concerns.

By December 31, 2015, the Liaison must report recommendations to the Commissioner for increasing DNR training opportunities with local fire protection districts, assessing local fire district resource availability, and increasing and maintaining the viability of local fire suppression assets. By October 31, 2016, DNR must report to the Legislature summarizing the Liaison's recommendations, DNR's implementation, and an analysis of the results.

Wildland Fire Advisory Committee. The Commissioner must appoint and maintain a Wildland Fire Advisory Committee (Committee) to advise the Commissioner on all matters related to wildland firefighting in the state including capital budget requests related to wildland firefighting and enhancing the safe and effective use of private and public wildland firefighting resources. The Commissioner may appoint members as the Commissioner determines is most helpful so long as they include the following people:

- two county commissioners – one each from east and west of the Cascade mountains;
- two owners of industrial land – one of timberland and one 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 each from east and west 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. DNR must 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 may, but is not required to, enter public or private land to extinguish or control a wildland fire if fighting the fire at that particular time and location can be reasonably considered a public necessity due to an imminent danger. 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;
 - preventive measures will extinguish or control the wildfire; and
 - the person is capable of taking preventive measures;
 - the person undertakes only reasonable and necessary measures 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; 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.

No civil or criminal liability may be imposed 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, except upon proof of gross negligence or willful or wanton misconduct. No person may materially benefit or retain any valuable materials from access to the public or private land. Authority to enter is limited to the minimum necessary for activities reasonably required to extinguish or control the fire. Reasonable activities include using hand tools to clear the ground of debris, operating readily available water hoses, and clearing flammable materials from the vicinity of structures. Prohibited activities 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. Liability protection includes 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. An owner, lessee, or occupant may be held liable for negligently permitting fire to spread.

DNR Master Contractor List. To maximize effective use of local fire suppression assets, DNR must:

- compile and update an annual master list of qualified fire suppression contractors with relevant valid incident qualifications and make the list available to county legislative authorities, emergency management departments, and local fire districts;
- cooperate with federal wildland firefighting agencies to maximize the efficient use of local resources in close proximity to wildland fire incidents;
- enter into preemptive agreements with landowners in possession of firefighting capability that may be used in wildland fire suppression efforts;
 - ensure all equipment and personnel satisfy DNR's standards and all contractors perform under the supervision of recognized wildland fire personnel; and
- provide basic incident command system and wildland fire safety training to landowners in possession of firefighting capability.

DNR may not be held civilly liable for any adverse impacts resulting from training or preemptive agreements except upon proof of gross negligence or willful or wanton misconduct.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (Recommended Amendments): 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 suppress wildland fires.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Natural Resources & Parks): PRO: We have quite a recent history of wildfires. The Carlton Complex fire was our largest fire in history. We have to have a better way to plug into our local resources. If we can put fires down quickly, then we would not have such high costs. We have had a record number of calls already from grass fires. We did not get snow this year. This bill addresses the challenges private landowners face when trying to fight fires. The trial attorneys support this liability standard. This bill brings communication back down to the local level. This bill will allow us to better coordinate and communicate between our local contractors. This bill is a good compromise between a number of stakeholders. Last year DNR fire crews were stretched quite thin. We have already had 46 fires – about 406 acres – this calendar year. We have 3 million acres of forests in eastern Washington in bad condition.

Persons Testifying (Natural Resources & Parks): PRO: Representative Kretz, prime sponsor; Wes McCart, Stevens County Commissioner; Jack Field, WA Cattlemen's Assn.; Michael Temple, WA State Assn. for Justice; Mike Moran, Confederated Tribes of the Colville Reservation; Seamus Petrie, WA Public Employees Assn.; Mary Verner, DNR Deputy Supervisor.

Persons Signed in to Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): CON: It is imperative that this bill be funded by this committee and not from the fire suppression funding DNR currently receives. The amendment added by the Natural Resources Committee is not acceptable; not only would it have a high fiscal cost for DNR, but it raises safety issues for firefighting. The Department of Fish and Wildlife has concerns with the committee striking amendment as it clearly represents a safety issue; we prefer the house version.

Persons Testifying (Ways & Means): CON: Peter Goldmark, Commissioner of Public Lands; Clay Sprague, WA Dept. of Fish and Wildlife.

Persons Signed in to Testify But Not Testifying: No one.