
SENATE BILL 5803

State of Washington

67th Legislature

2022 Regular Session

By Senators Rolfes, Dhingra, Frockt, and Nobles

Read first time 01/11/22. Referred to Committee on Environment,
Energy & Technology.

1 AN ACT Relating to establishing a presumption of liability for
2 wildfires caused by an electric utility's equipment; amending RCW
3 76.04.760 and 76.04.495; adding a new section to chapter 4.24 RCW;
4 adding a new section to chapter 80.04 RCW; creating a new section;
5 and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
8 to read as follows:

9 (1) An electric utility is presumed to be liable for damage
10 resulting from a fire caused by the electric utility's equipment. The
11 electric utility may rebut this presumption upon proving by clear and
12 convincing evidence that the fire ignited despite the electric
13 utility having performed all applicable best management practices
14 guidelines established pursuant to section 2 of this act.

15 (2) The presumption of liability provided in this section is in
16 addition to and does not supersede or modify any other cause of
17 action for the recovery of damages from a wildfire caused by an
18 electric utility, whether the cause of action is provided by
19 statutory or common law.

1 (3) For the purposes of this section, "electric utility" means
2 any electrical company as defined in RCW 80.04.010 and any consumer-
3 owned utility as defined in RCW 19.29A.010.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.04
5 RCW to read as follows:

6 (1) By December 31, 2023, the commission shall adopt by rule
7 guidelines for best management practices by an electric utility to
8 prevent wildfires caused by the electric utility's equipment. The
9 commission shall consult with the department of natural resources,
10 the fire protection division of the state patrol, and the department
11 of labor and industries in developing the guidelines. The commission
12 shall also consult with electric utilities as well as city fire
13 departments and county fire officials charged with responsibility for
14 investigating the origin and cause of fires. The commission shall
15 solicit public review and comment upon a draft of the guidelines. The
16 commission shall also invite federally recognized tribes to
17 participate in the development of the guidelines.

18 (2) The best management practices guidelines must address:

19 (a) Vegetation management along transmission and distribution
20 lines and near associated equipment;

21 (b) Inspection and maintenance repair activities and schedules;

22 (c) Modifications or upgrades to facilities and construction of
23 new facilities to incorporate measures to minimize fire risk; and

24 (d) Preventative programs.

25 (3) For the purposes of this section, "electric utility" means
26 any electrical company as defined in RCW 80.04.010 and any consumer-
27 owned utility as defined in RCW 19.29A.010.

28 **Sec. 3.** RCW 76.04.760 and 2014 c 81 s 1 are each amended to read
29 as follows:

30 (1) The owner of public or private forested lands may bring a
31 civil action in superior court for property damage to public or
32 private forested lands, including real and personal property on those
33 lands, when the damage results from a fire that started on or spread
34 from public or private forested lands.

35 (2) Liability under this section attaches to the extent that
36 evidence demonstrates that:

1 (a) An action or inaction by a person relating to the start or
2 spread of the fire from public or private forested lands constituted
3 negligence or a higher degree of fault; and

4 (b) The action or inaction under (a) of this subsection was a
5 proximate cause of the property damage.

6 (3) For damage caused by an electric utility, a presumption of
7 liability attaches unless the utility demonstrates its actions were
8 in compliance with best management practices as established pursuant
9 to section 1 of this act.

10 (4) Recoverable damages under this section are limited to:

11 (a) Either: (i) The difference in the fair market value of the
12 damaged property immediately before and after the fire. For real
13 property, the state-certified general real estate appraiser must
14 identify and analyze all relevant characteristics and uses of the
15 property including cultural, recreational, and environmental
16 characteristics and uses, to the extent such characteristics or uses
17 contribute to the fair market value of the property based on the
18 highest and best use of the property. The state-certified general
19 real estate appraiser shall expressly address the assumptions and
20 conditions used to evaluate such characteristics and uses, consistent
21 with standards of professional appraisal practice adopted under
22 chapter 18.140 RCW; or (ii) the reasonable cost of restoring the
23 damaged property to the general condition it was in immediately
24 before the fire, to the extent permitted by Washington law;

25 (b) The reasonable expenses incurred to suppress or extinguish
26 the fire unless otherwise provided for in this chapter;

27 (c) Any other objectively verifiable monetary loss, that is not
28 duplicative of the recovery specified under (a) or (b) of this
29 subsection including, but not limited to: Out-of-pocket expenses;
30 loss of earnings; loss of use of property; or loss of business or
31 employment opportunities; and

32 (d) In actions brought by an Indian tribe for recovery of damages
33 from injury to archaeological objects, archaeological sites, or
34 historic archaeological resources, damages as measured in accordance
35 with WAC 25-48-043 as it existed on June 12, 2014.

36 ~~((4))~~ (5) This section provides the exclusive cause of action
37 for property damage to public or private forested lands, including
38 real and personal property on those lands, resulting from a fire that
39 started on or spread from public or private forested lands.

1 (~~(5)~~) (6) The definitions in this subsection only apply
2 throughout this section relating to the specification of damages for
3 fire damage to public and private forested lands, unless the context
4 clearly requires otherwise, and do not apply to and are not intended
5 as a source for interpretation of other sections of this chapter.

6 (a) "Fair market value" means the amount that a willing buyer
7 would pay to a willing seller for property in an arms-length
8 transaction if both parties were fully informed about all advantages
9 and disadvantages of the property and neither party is acting under a
10 compulsion to sell, as determined by: (i) For real property, a state-
11 certified general real estate appraiser as defined under RCW
12 18.140.010; and (ii) for personal property, an appraiser qualified to
13 appraise the property based on training and experience. For real
14 property, the state-certified general real estate appraiser must
15 identify and analyze all relevant characteristics and uses of the
16 property including cultural, recreational, and environmental
17 characteristics and uses, to the extent such characteristics or uses
18 contribute to the fair market value of the property based on the
19 highest and best use of the property. The state-certified general
20 real estate appraiser shall expressly address the assumptions and
21 conditions used to evaluate such characteristics and uses, consistent
22 with standards of professional appraisal practice adopted under
23 chapter 18.140 RCW.

24 (b) "Forest tree species" means a tree species that is capable of
25 producing logs, fiber, or other wood materials that are suitable for
26 the production of lumber, sheeting, pulp, firewood, or other forest
27 products.

28 (c) "Owner of public or private forested lands" means any person
29 in actual control of public or private forested lands, whether the
30 control is based either on legal or equitable title, or on any other
31 interest entitling the holder to sell or otherwise dispose of any or
32 all of the timber on the land in any manner.

33 (d) "Person" includes: An individual; a corporation; a public or
34 private entity or organization; a local, state, or federal government
35 or governmental entity; any business organization, including
36 corporations and partnerships; or a group of two or more individuals
37 acting with a common purpose.

38 (e) "Public or private forested lands" means any lands used or
39 biologically capable of being used for growing forest tree species
40 regardless of the existing use of the land except when the

1 predominant physical use of the land at the time of the fire is not
2 consistent with the growing, conservation, or preservation of forest
3 tree species. Examples of inconsistent uses include, but are not
4 limited to, buildings, airports, parking lots, mining, solid waste
5 disposal, cropfields, orchards, vineyards, pastures, feedlots,
6 communication sites, and home sites that may include up to ten acres.
7 Public or private forested lands do not include state highways,
8 county roads, railroad rights-of-way, and utility rights-of-way that
9 cross over, under, or through such lands.

10 **Sec. 4.** RCW 76.04.495 and 1993 c 196 s 2 are each amended to
11 read as follows:

12 (1) Any person, firm, or corporation: (a) Whose negligence is
13 responsible for the starting or existence of a fire which spreads on
14 forestland; or (b) who creates or allows an extreme fire hazard under
15 RCW 76.04.660 to exist and which hazard contributes to the spread of
16 a fire; or (c) who allows forest debris subject to RCW 76.04.650 to
17 exist and which debris contributes to the spread of fire, shall be
18 liable for any reasonable expenses made necessary by (a), (b), or (c)
19 of this subsection. The state, a municipality, a forest protective
20 association, or any fire protection agency of the United States may
21 recover such reasonable expenses in fighting the fire, together with
22 costs of investigation and litigation including reasonable attorneys'
23 fees and taxable court costs, if the expense was authorized or
24 subsequently approved by the department. The authority granted under
25 this subsection allowing the recovery of reasonable expenses incurred
26 by fire protection agencies of the United States shall apply only to
27 such expenses incurred after June 30, 1993. The determination of
28 negligence and liability for expenses under this section where the
29 fire was caused by an electric utility is subject to the provisions
30 of section 1 of this act.

31 (2) The department or agency incurring such expense shall have a
32 lien for the same against any property of the person, firm, or
33 corporation liable under subsection (1) of this section by filing a
34 claim of lien naming the person, firm, or corporation, describing the
35 property against which the lien is claimed, specifying the amount
36 expended on the lands on which the firefighting took place and the
37 period during which the expenses were incurred, and signing the claim
38 with post office address. No claim of lien is valid unless filed,
39 with the county auditor of the county in which the property sought to

1 be charged is located, within a period of (~~ninety~~) 90 days after
2 the expenses of the claimant are incurred. The lien may be foreclosed
3 in the same manner as a mechanic's lien is foreclosed under the
4 statutes of the state of Washington.

5 NEW SECTION. **Sec. 5.** This act applies prospectively only and
6 not retroactively. It applies only to causes of action that arise
7 after January 1, 2024.

8 NEW SECTION. **Sec. 6.** Section 1 of this act takes effect January
9 1, 2024.

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