
SUBSTITUTE HOUSE BILL 2093

State of Washington

64th Legislature

2015 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Short, Blake, Buys, and Condotta)

1 AN ACT Relating to wildland fire suppression; amending RCW
2 76.04.015; reenacting and amending RCW 76.04.005; adding a new
3 section to chapter 43.30 RCW; adding new sections to chapter 76.04
4 RCW; creating new sections; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that wildland fires
7 can be devastating to communities, agriculture, and forests. Wildland
8 fires destroy property, cost large amounts of money, and put people
9 at risk with the potential of death. Everything possible should be
10 done to combat and prevent wildland fires from occurring. Properly
11 managing forests, preventing insect infestations in forests,
12 combating climate change, and ensuring that homes built in rural
13 areas can better withstand wildland fires are important goals.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.30
15 RCW under the subchapter heading "organization" to read as follows:

16 (1) The commissioner must appoint a local wildland fire liaison
17 that reports directly to the commissioner or the supervisor and
18 generally represents the interests and concerns of landowners and the
19 general public during any fire suppression activities of the
20 department.

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

5 (3) In appointing the local wildland fire liaison, the
6 commissioner must consult with county legislative authorities either
7 directly or through an organization that represents the interests of
8 county legislative authorities.

9 NEW SECTION. **Sec. 3.** (1) The local wildland fire liaison
10 created in section 2 of this act must prepare a report to the
11 commissioner of public lands by December 31, 2015, that provides
12 recommendations regarding:

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

15 (b) The ability to quickly evaluate the availability of local
16 fire district resources in a manner that allows the local resources
17 to be more efficiently and effectively dispatched to wildland fires;
18 and

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

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

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

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

29 (1) The commissioner must appoint and maintain a wildland fire
30 advisory committee to generally advise the commissioner on all
31 matters related to wildland firefighting in the state. This includes,
32 but is not limited to, developing recommendations regarding
33 department capital budget requests related to wildland firefighting
34 and developing strategies to enhance the safe and effective use of
35 private and public wildland firefighting resources.

36 (2) The commissioner may appoint members to the wildland fire
37 advisory committee as the commissioner determines is the most helpful

1 in the discharge of the commissioner's duties. However, at a minimum,
2 the commissioner must invite the following:

3 (a) Two county commissioners, one from east of the crest of the
4 Cascade mountains and one from west of the crest of the Cascade
5 mountains;

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

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

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

13 (e) A representative of a federal wildland firefighting agency;

14 (f) A representative of a tribal nation;

15 (g) A representative of a statewide environmental organization;

16 (h) A representative of a state land trust beneficiary; and

17 (i) A small forest landowner.

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

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

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

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

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

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.04
33 RCW to read as follows:

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

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

9 (c) An individual may enter land under this subsection (1) only
10 if:

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

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

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

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

20 (v) The individual only undertakes measures that are reasonable
21 and necessary until professional wildfire suppression personnel
22 arrives;

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

25 (vii) The individual takes preventive measures only for the
26 period of time until efforts to control the wildfire have been
27 assumed by professional wildfire suppression personnel, unless
28 explicitly authorized by professional wildland firefighting personnel
29 to remain engaged in suppressing the fire;

30 (viii) The individual follows the instructions of professional
31 wildfire fighting personnel, including ceasing to engage in
32 firefighting activities, when directed to do so by professional
33 wildland firefighting personnel; and

34 (ix) The individual promptly notifies emergency personnel and the
35 landowner, lessee, or occupant prior to entering the land or within a
36 reasonable time after the individual attempts to extinguish or
37 control the wildland fire.

38 (d) Nothing in this section authorizes any person to materially
39 benefit from accessing land or retain any valuable materials that may

1 be collected or harvested during the time the individual attempts to
2 extinguish or control the wildland fire.

3 (e)(i) The authority to enter privately owned or publicly owned
4 land under this subsection (1) is limited to the minimum necessary
5 activities reasonably required to extinguish or control the wildland
6 fire.

7 (ii) Activities that may be reasonable under this subsection (1)
8 include: Using hand tools to clear the ground of debris, operating
9 readily available water hoses, clearing flammable materials from the
10 vicinity of structures, unlocking or opening gates to assist
11 firefighter access, and safely scouting and reporting fire behavior.

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

18 (f) Nothing in this subsection (1) confers a legal or civil duty
19 or obligation on a person to attempt to extinguish or control a
20 wildfire.

21 (2)(a) No civil or criminal liability may be imposed by any court
22 on the owner, lessee, or occupant of any land accessed as permitted
23 under subsection (1) of this section for any direct or proximate
24 adverse impacts resulting from the access to privately owned or
25 publicly owned land allowed under subsection (1) of this section,
26 except upon proof of willful or wanton misconduct by the owner,
27 lessee, or occupant. The barriers to civil and criminal liability
28 imposed by this subsection include, but are not limited to, impacts
29 on:

30 (i) The individual accessing the privately owned or publicly
31 owned land and the individual's personal property, including loss of
32 life;

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

35 (iii) Other landholdings; and

36 (iv) Overall environmental resources.

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

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

4 **Sec. 6.** RCW 76.04.015 and 2012 c 38 s 1 are each amended to read
5 as follows:

6 (1) The department may, at its discretion, appoint trained
7 personnel possessing the necessary qualifications to carry out the
8 duties and supporting functions of the department and may determine
9 their respective salaries.

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

12 (3) The department shall:

13 (a) Enforce all laws within this chapter;

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

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

38 (ii) Absent a court order authorizing otherwise, the department
39 may not take possession or control of evidence over the objection of

1 the owner of the evidence if the evidence is used by the owner in
2 conducting a business or in providing an electric utility service and
3 the department's taking possession or control of the evidence would
4 substantially and materially interfere with the operation of the
5 business or provision of electric utility service.

6 (iii) Absent a court order authorizing otherwise, the department
7 may not take possession or control of evidence over the objection of
8 an electric utility when the evidence is not owned by the utility but
9 has caused damage to property owned by the utility. However, this
10 subsection (3)(c)(iii) does not apply if the department has notified
11 the utility of its intent to take possession or control of the
12 evidence and provided the utility with reasonable time to examine,
13 document, and photograph the evidence.

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

17 (d) Furnish notices or information to the public calling
18 attention to forest fire dangers and the penalties for violation of
19 this chapter;

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

22 (f) Maximize the effective utilization of local fire suppression
23 assets consistent with section 7 of this act; and

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

26 (4) The department may:

27 (a) Authorize all needful and proper expenditures for forest
28 protection;

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

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

37 (d) Inquire into:

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

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

3 (e) Provide fire detection, prevention, presuppression, or
4 suppression services on nonforested public lands managed by the
5 department or another state agency, but only to the extent that
6 providing these services does not interfere with or detract from the
7 obligations set forth in subsection (3) of this section. If the
8 department provides fire detection, prevention, presuppression, or
9 suppression services on nonforested public lands managed by another
10 state agency, the department must be fully reimbursed for the work
11 through a cooperative agreement as provided for in RCW 76.04.135(1).

12 (5) Any rules adopted under this section for the suppression of
13 forest fires must include a mechanism by which a local fire
14 mobilization radio frequency, consistent with RCW 43.43.963, is
15 identified and made available during the initial response to any
16 forest fire that crosses jurisdictional lines so that all responders
17 have access to communications during the response. Different initial
18 response frequencies may be identified and used as appropriate in
19 different geographic response areas. If the fire radio communication
20 needs escalate beyond the capability of the identified local radio
21 frequency, the use of other available designated interoperability
22 radio frequencies may be used.

23 (6) When the department considers it to be in the best interest
24 of the state, it may cooperate with any agency of another state, the
25 United States or any agency thereof, the Dominion of Canada or any
26 agency or province thereof, and any county, town, corporation,
27 individual, or Indian tribe within the state of Washington in forest
28 firefighting and patrol.

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

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

33 (a) Compile and annually update a master list of qualified fire
34 suppression contractors who have a valid incident qualification card,
35 commonly referred to as a red card, stating current qualifications
36 and make the list available to county legislative authorities,
37 emergency management departments, and local fire districts;

1 (b) Cooperate with federal wildland firefighting agencies to
2 maximize, based on predicted need, the efficient use of local
3 resources in close proximity to wildland fire incidents;

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

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

15 (2) When entering into preemptive agreements with landowners
16 under this section, the department must ensure that:

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

18 (b) All contractors are, when engaged in fire suppression
19 activities, under the supervision of recognized wildland fire
20 personnel.

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

26 **Sec. 8.** RCW 76.04.005 and 2014 c 90 s 1 are each reenacted and
27 amended to read as follows:

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

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

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

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

1 riparian areas under the provisions of RCW 76.04.465 or chapter 76.09
2 RCW.

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

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

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

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

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

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

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

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

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

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

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

39 (13) "Incendiary ammunition" means ammunition that is designed to
40 ignite or explode upon impact with or penetration of a target or

1 designed to trace its course in the air with a trail of smoke,
2 chemical incandescence, or fire.

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

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

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

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

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

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

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

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

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

1 (23) "Local wildland fire liaison" means the person appointed by
2 the commissioner to serve as the local wildland fire liaison as
3 provided in section 2 of this act.

--- END ---