

# HOUSE BILL REPORT

## HB 1321

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As Reported By House Committee On:  
Natural Resources & Parks

**Title:** An act relating to forest fires.

**Brief Description:** Modifying the department of natural resources fire prevention and suppression responsibilities.

**Sponsors:** Representatives Pruitt and R. Johnson.

**Brief History:**

Reported by House Committee on:  
Natural Resources & Parks, February 5, 1993, DPS.

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### HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Morton, Ranking Minority Member; Stevens, Assistant Ranking Minority Member; Dunshee; Linville; Schoesler; Sheldon; Thomas; Valle; and Wolfe.

**Staff:** Tim Burke (786-7103).

**Background:**

Department of Natural Resources' Firefighting Responsibility

Recently, a group of landowners sued the State of Washington, acting through the Department of Natural Resources (DNR), for damages to the landowners' properties as a result of a fire which began on the department's land and subsequently escaped. Central to the arguments made in court, and to DNR's liability, was the issue of whether the department owed a particular duty to the landowners, separate from its duty to the public in general. The Washington State Supreme Court concluded that it did and held in favor of the landowners.

Recovering Fire Suppression Costs

Under current law, the state, a municipality, or a forest protective association may recover the costs of fighting a fire if the fire has been caused by negligence, by creation of an extreme fire hazard, or by allowing the build-up of

forest debris. The person responsible for one or more of these three conditions is liable for the costs of fighting the fire. Current law excludes cost recovery for entities other than the state, a municipality, or a forest protective association. Federal agencies assisting with fire suppression efforts have had difficulty recovering their expenditures.

#### Fire Investigations

The Department of Natural Resources is obligated to investigate the origin and cause of all forest fires. The department does not have express statutory authority to seize evidence found in the course of an investigation.

#### **Summary of Substitute Bill:**

##### Department of Natural Resources' Firefighting Responsibility

The Department of Natural Resources, when acting in good faith as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons, separate and apart from the public. In particular, the department owes no special duty to persons who pay forest protection or fire suppression assessments.

##### Recovering Fire Suppression Costs

Federal agencies assisting in fire suppression efforts are eligible to use the state's cost recovery law in the same manner as the state, a municipality, or a fire protective association.

#### Fire Investigations

In the course of conducting a fire investigation, the department is authorized, without a court order, to take possession or control of relevant evidence found in plain view. If the owner of the property objects, the department must return the property within 15 days or obtain a court order authorizing it to keep the property for a longer period. A court order is required before the department may take possession or control of evidence that is not in plain view. Absent a court order, the department does not have the power to take possession or control of evidence if to do so would prohibit or interfere with the legal obligation of an electric utility to provide services to its customers.

**Substitute Bill Compared to Original Bill:** In addition to some clarification changes, the substitute: (1) limits a federal agency's use of the state's firefighting expense

recovery provisions so that only a federal "fire protection agency" can use the provisions and so that recovery will be limited to expenses incurred after the effective date of the bill; and (2) restricts the department's investigatory powers with respect to electric utilities.

**Fiscal Note:** Available.

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

**Testimony For:** The Department of Natural Resources should have the same immunity for negligence when it fights fires as local governments have when they fight fires. Federal agencies should be able to use the state's cost recovery provisions. The department, when it conducts an investigation on the cause of a fire, should have an express grant of authority authorizing it to take possession or control of evidence.

**Testimony Against:** None.

**Witnesses:** Nels Hanson, Washington Farm Forestry Association (Pro); Pat McElroy, Department of Natural Resources (Pro); Tim Boyd, Washington Forest Protection Association (Pro); and Collins Sprague, Washington Water Power Company (testified only in support of certain amendments).