

# HOUSE BILL REPORT

## ESSB 5972

---

---

As of Second Reading

**Title:** An act relating to specifying recovery for fire damages to public or private forested lands.

**Brief Description:** Specifying recovery for fire damages to public or private forested lands.

**Sponsors:** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pearson, Rolfes, Hargrove, Mullet, Sheldon, Hewitt, Cleveland, Honeyford, Fain, Hill, Braun, Fraser, Litzow, Parlette, Frockt and Kline; by request of Commissioner of Public Lands).

**Brief History:**

**Committee Activity:**

Judiciary: 2/25/14.

**Brief Summary of Engrossed Substitute Bill**

- Establishes an exclusive cause of action for property damage to public or private forested lands resulting from a fire that started on or spread from public or private forested lands.

---

### HOUSE COMMITTEE ON JUDICIARY

**Staff:** Edie Adams (786-7180).

**Background:**

Liability for damages resulting from negligence in the starting or controlling of a fire are recognized under both statutory and common law.

The state forest protection laws impose an obligation on every owner of forest land in Washington to furnish or provide adequate protection against the spread of fire on or from the owner's lands. There are a number of statutory provisions that impose liability upon a forest land owner or others based on negligence in the setting of a fire or in preventing the spread of a fire.

---

*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.*

A person who lawfully kindles a fire must do so in a prudent and careful manner to prevent it from spreading and damaging another's property. If the person's negligence results in damage to another's property, he or she can be liable for the full amount of all damages. In addition, there are several statutory provisions that specifically allow for the recovery of fire suppression costs from: a person who is negligent in starting a fire; an owner or possessor of forest lands who has knowledge of an uncontrolled fire on the land and who fails to make every reasonable effort to suppress the fire; and a person who allows an extreme fire hazard to exist which contributes to the spread of a fire.

Under the common law, an owner or occupant of land who starts a fire on the land, or who has knowledge of a fire on the land, must exercise ordinary and reasonable care to prevent the spread of the fire. An owner or occupant who negligently fails to prevent the spread of fire from the land is liable for all damages proximately caused by the person's negligence.

In awarding property damages, courts attempt to place the injured person as nearly as possible in the condition the person would have been in had the injury not occurred. The measure of damages depends on the type of property and the type and extent of the injury to the property. The courts have established general methods for assessing damage to property, but the decision on which measure of damages to apply is left to the trier of fact.

Generally accepted measures of damage to real property include: the difference between the market value of the property before and after damage, in cases where the injury is permanent; or the reasonable expense of restoring the property to its original condition, if the damage is temporary and the property is capable of being restored. Courts have recognized that in some cases it may be appropriate to award diminution in market value and restoration costs where those amounts are not duplicative. For personal property that is destroyed, damages are based on the fair market value of the property; if the property has no fair market value, damages are based on replacement cost or intrinsic value. When personal property is damaged and capable of repair, damages are the lesser of the cost of restoration or the diminution in value of the property.

---

### **Summary of Bill:**

A new statutory cause of action is established for property damage to public or private forested lands resulting from a fire that started on or spread from public or private forested lands. This action provides the exclusive remedy for damage to real or personal property from fire under these circumstances.

"Public or private forested lands" means any lands used or biologically capable of being used for growing forest tree species regardless of the existing use of the land except when the predominant physical use of the land at the time of the fire is not consistent with the growing, conservation, or preservation of forest tree species. Examples of inconsistent uses are provided, including: buildings, parking lots, mining, crops, pastures, and home sites that may include up to 10 acres.

Standard of Liability. A person may be found liable if the person's action or inaction relating to the start or spread of the fire constituted negligence or a higher standard of fault, and the action or inaction was a proximate cause of the property damage.

Damages. The recoverable damages are limited to the following three categories:

1. either: (a) the difference in the fair market value of the damaged property immediately before and after the fire, or (b) the reasonable cost of restoring the damaged property to the general condition it was in immediately before the fire, except the cost of restoration may not exceed the difference in the fair market value of the damaged property before and after the fire;
2. reasonable expenses incurred to suppress or extinguish the fire unless otherwise provided for in law; and
3. other objectively verifiable monetary loss, including: out-of-pocket expenses; loss of earnings; loss of use of property; or loss of business or employment opportunities. These losses must be evidenced by pre-fire investments, income, expenses, or contracts.

"Fair market value" is defined as the amount that a willing buyer would pay to a willing seller in an arms-length transaction if all parties are informed of the advantages and disadvantages of the property and neither party is acting under a compulsion to sell. For real property, the fair market value must be determined by a state-certified general real estate appraiser, and the appraiser must identify and analyze all relevant characteristics and uses of the property to the extent the characteristics and uses contribute to the fair market value of the property, including cultural, recreational, and environmental characteristics and uses.

Application. The act applies prospectively to any cause of action that arises on or after the act's effective date.

Existing statutory causes of action relating to liability for fire damage are amended to exclude actions based on property damage to public or private forested lands resulting from a fire that started on or spread from public or private forested lands.

The act does not affect or preclude:

- any action relating to the imposition of civil or criminal penalties as authorized by law;
- the recovery of fire suppression costs as authorized under the fire protection laws;
- an action for treble damages against a person who wrongfully goes onto the land of another and causes waste or injury to the land or damage to personal property or improvements on the land; or
- an action under the chapters governing Indian graves and records or archaeological sites and resources.

In addition, the act does not affect the provision of law stating that the Department of Natural Resources, when acting 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 from the public at large.

**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:**

(In support) This is an important bill for public and private forest landowners in the state. The federal government has become increasingly aggressive in using state laws to obtain excessive judgments and settlements in forest fire cases. This is a real concern for Washington because of the large amount of federal forest lands in the state. The federal government has not adequately managed federal forest lands which puts our state forests at risk. Washington law regarding forest fire damages is unclear and relatively untested. Oregon, Montana, Idaho, and California have all changed their laws to provide certainty in these types of cases. Washington's public and private forest landowners are at a risk of having to pay these excessive claims if we fail to change our state law. The bill is a preventative measure that provides certainty by putting into statute the current traditional measure of property damages in fire cases. It is fair because it establishes one standard that applies to everyone.

This bill is important to help protect our state trust lands. Excessive damages in forest fire cases could jeopardize trust land funds which benefit our school districts. This bill is also important to counties, because some of our most valuable timberlands are in counties that would have the least ability to handle large damage awards. It is appropriate that the bill uses certified appraisers to look at the whole property market value losses caused by a fire. The federal government when it purchases forest lands uses the yellow book values which do not include any recognition of intangible natural resources values. The bill preserves cultural resource actions under current law, which provides a structured way to assess damages to archaeological sites.

(Opposed) The concern about the risks of unreasonable damages awards is understandable, but this bill does not strike the right compromise. The bill's use of fair market valuation as the measure of damages does not adequately capture the public values of our public lands. A fair market value assessment requires information on sales of comparable property, which do not exist for these lands. Our public lands are not valued because of their timber value. Their real value comes from their wildlife, habitat, and recreational uses. There is no fair market value for these kinds of precious resources. We need to keep the door open to ecosystem values, habitat values, cultural values, and recreation values. The values should be recognized and compensated in forest fire cases. Evaluating and compensating for environmental harms is already being done in many other types of cases involving damage to public lands, so there are proven assessment standards for these harms. The bill's exemption for actions under our statutes protecting tribal cultural resources or archaeological sites and artifacts does not provide adequate protection since those laws do not cover negligent actions.

**Persons Testifying:** (In support) Glen Morgan, Rochester School District; Allyson Brooks, Department of Archaeology and Historic Preservation; Greg Richards; Mary Verner, Washington Department of Natural Resources; Ken Kanikeberg, Office of Superintendent of Public Instruction; Brian Enslow, Washington State Association of Counties; Debora Munguia; Tom Nelson, Sierra Pacific Industries; and Galen Schuler, Green Diamond.

(Opposed) Darcy Nenemacher, Washington Environmental Council; Paula Swedeen, Swedeen Consulting; Miguel Perez Gibson, Washington Environmental Council; and Neil Beaver, The Lands Council.

**Persons Signed In To Testify But Not Testifying:** None.