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**SENATE BILL 5803**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Rolfes, Dhingra, Frockt, and Nobles

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

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

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

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

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

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

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

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

(2) The best management practices guidelines must address:

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

(b) Inspection and maintenance repair activities and schedules;

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

(d) Preventative programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) "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 include, but are not limited to, buildings, airports, parking lots, mining, solid waste disposal, cropfields, orchards, vineyards, pastures, feedlots, communication sites, and home sites that may include up to ten acres. Public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands.

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

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

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the firefighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ((~~ninety~~)) 90 days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington.

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

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

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