

HOUSE BILL 1237

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By Representatives Kretz, Blake, Dent, Lytton, Manweller, Pettigrew, Short, Scott, Buys, and Condotta

Read first time 01/15/15. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to providing landowners with necessary tools for
2 the protection of their property from forest fires; and amending RCW
3 76.04.750, 79.02.300, 79.02.320, and 79.02.330.

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

5 **Sec. 1.** RCW 76.04.750 and 1988 c 273 s 4 are each amended to
6 read as follows:

7 (1) Any fire on, or threatening, any forest land burning
8 uncontrolled and without proper action being taken to prevent its
9 spread, ~~((notwithstanding))~~ regardless of the origin of the fire, is
10 a public nuisance by reason of its menace to life and property. The
11 landowner and any other person engaged in any activity on such
12 lands~~((,))~~ having knowledge of the fire, ~~((notwithstanding))~~
13 regardless of the origin or subsequent spread ~~((thereof))~~ of the fire
14 on his or her own or other forest lands, ~~((and the landowner,))~~ shall
15 make every reasonable effort to suppress the fire.

16 (2)(a) If the person has not suppressed the fire and the fire is
17 on or threatening forest land within a forest protection zone, the
18 department shall summarily suppress the fire.

19 (b) If the owner, lessee, other possessor of ~~((such))~~ the land,
20 or an agent or contractor of the owner, lessee, or possessor, having
21 knowledge of the fire, has not made a reasonable effort to suppress

1 the fire, the cost (~~thereof~~) of fire suppression may be recovered
2 from the owner, lessee, or other possessor of the land and the cost
3 of the work shall also constitute a lien upon the real property or
4 chattels under the person's ownership. The lien may be filed by the
5 department in the office of the county auditor and foreclosed in the
6 same manner provided by law for the foreclosure of mechanics' liens.
7 The prosecuting attorney shall bring the action to recover the cost
8 or foreclose the lien, upon the request of the department. In the
9 absence of negligence, no costs, other than those provided in RCW
10 76.04.475, shall be recovered from any landowner for lands subject to
11 the forest protection assessment with respect to the land on which
12 the fire burns.

13 (3) When a fire occurs in a land clearing, right-of-way clearing,
14 or landowner operation it shall be fought to the full limit of the
15 available employees and equipment, and the firefighting shall be
16 continued with the necessary crews and equipment in such numbers as
17 are, in the opinion of the department, sufficient to suppress the
18 fire. The fire shall not be left without a firefighting crew or fire
19 patrol until authority has been granted in writing by the department.

20 (4)(a) A landowner, a landowner's agent, or other person with
21 potential duties or liability under this section may access,
22 consistent with this subsection, land owned or managed by the
23 department or the department of fish and wildlife for the purposes of
24 constructing a fire line or taking other preventive measures intended
25 to stop or slow the spread of a fire onto property owned by, or under
26 the responsibility of, the actor.

27 (b) Land owned or managed by the department may only be accessed
28 under this subsection if the following applies:

29 (i) The state-managed land is either adjacent to, or in
30 reasonably close proximity to, the land to which the duty or
31 liability under this section attaches;

32 (ii) There is a reasonable basis to believe that local fire
33 conditions are creating an emergency situation and that there is
34 imminent danger of a fire spreading from, or across, the parcel of
35 state-managed land being accessed;

36 (iii) There is a reasonable basis to believe that the
37 construction of a fire line or other preventive measure will stop or
38 slow the spread of a fire from, or across, the parcel of state-
39 managed land being accessed; and

1 (iv) The department or the department of fish and wildlife,
2 whichever is appropriate, has been given notice of the intent to
3 enter state-managed land.

4 (c) Nothing in this subsection authorizes any person to
5 materially benefit from accessing state-managed land or retain any
6 valuable materials that may be collected or harvested during the
7 construction of a fire line or other preventive measure.

8 (d) The authority to access state-managed land under this section
9 is limited to the minimum necessary activities reasonably required to
10 stop or slow the spread of a fire.

11 (e) No civil liability may be imposed by any court on the state
12 or the officers and employees of the state, the department, or the
13 department of fish and wildlife for any direct or proximate adverse
14 impacts resulting from the access to state-managed land allowed under
15 this subsection, or the actions and activities of the individuals
16 accessing the state-managed land, except upon proof of gross
17 negligence or willful or wanton misconduct by the department, the
18 department of fish and wildlife, or the employees of the agencies.
19 The barrier to civil liability created by this subsection includes,
20 but is not limited to, impacts on:

21 (i) The individuals accessing the state-managed land and their
22 personal property;

23 (ii) Any structures or land alterations by individuals accessing
24 the state-managed land;

25 (iii) Other landholdings; and

26 (iv) Overall environmental resources.

27 **Sec. 2.** RCW 79.02.300 and 2009 c 349 s 1 are each amended to
28 read as follows:

29 (1)(a) Every person who, without authorization, uses or occupies
30 public lands, removes any valuable material as defined in RCW
31 79.02.010 from public lands, ((~~or~~)) causes waste or damage to public
32 lands, or injures publicly owned personal property or publicly owned
33 improvements to real property on public lands, is liable to the state
34 for treble the amount of the damages. However, liability shall be for
35 single damages if the department determines, or the person proves
36 upon trial, that the person, at time of the unauthorized act or acts,
37 did not know, or have reason to know, that he or she lacked
38 authorization.

1 **(b)** Damages recoverable under this section include, but are not
2 limited to, the market value of the use, occupancy, or things
3 removed, had the use, occupancy, or removal been authorized; and any
4 damages caused by injury to the land, publicly owned personal
5 property or publicly owned improvement, including the costs of
6 restoration. In addition, the person is liable for reimbursing the
7 state for its reasonable costs including, but not limited to, its
8 administrative costs, survey costs to the extent they are not
9 included in damages awarded for restoration costs, and its reasonable
10 attorneys' fees and other legal costs.

11 (2) This section does not apply in any case where liability for
12 damages is provided under RCW 4.24.630, 64.12.030, or 79.02.320.

13 (3) The department is authorized and directed to investigate all
14 trespasses and wastes upon, and damages to, public lands of the
15 state, and to cause prosecutions for, and/or actions for the recovery
16 of the same, to be commenced as provided by law.

17 (4) For the purposes of this section, accessing department-
18 managed land for the purposes of fire suppression consistent with RCW
19 76.04.750 is considered authorized access.

20 **Sec. 3.** RCW 79.02.320 and 2009 c 349 s 3 are each amended to
21 read as follows:

22 (1) Every person who ((shall)) cuts or removes, or causes to be
23 cut or removed, any timber growing or being upon any public lands of
24 the state, including a Christmas tree as defined in RCW ((76.48.020))
25 76.48.021, or who ((shall)) manufactures the same into logs, bolts,
26 shingles, lumber, or other articles of use or commerce, unless
27 expressly authorized so to do by a bill of sale from the state, or by
28 a lease or contract from the state under which he or she holds
29 possession of such lands, or by provisions of law under which the
30 bill of sale, lease, or contract was issued, shall be liable to the
31 state for treble the value of the timber or other articles cut,
32 removed, or manufactured, to be recovered in a civil action, and
33 shall forfeit to the state all interest in any article into which the
34 timber is manufactured.

35 (2) For the purposes of this section, cutting timber for the
36 purposes of fire suppression consistent with RCW 76.04.750 is
37 considered an authorized activity that does not violate the
38 provisions of this section.

1 **Sec. 4.** RCW 79.02.330 and 2003 c 334 s 434 are each amended to
2 read as follows:

3 (~~Every~~) (1) A person (~~being~~) in lawful possession of any
4 public lands of the state, (~~under and~~) by virtue of (~~any~~) a lease
5 or contract of purchase from the state, who cuts down, destroys, or
6 injures, or causes to be cut down, destroyed, or injured, any timber
7 standing or growing thereon, or takes or removes, or causes to be
8 taken or removed, therefrom, any wood or timber lying thereon, or
9 maliciously injures or severs anything attached thereto, or the
10 produce thereof, or digs, quarries, mines, takes, or removes
11 therefrom, any earth, soil, clay, sand, gravel, stone, mineral, or
12 other valuable material, or causes the same to be done, or otherwise
13 injures, defaces, or damages, or causes to be injured, defaced, or
14 damaged, any such lands unless expressly authorized so to do by the
15 lease or contract under which possession of such lands is held, or by
16 the provisions of law under and by virtue of which such lease or
17 contract was issued, shall be guilty of a misdemeanor.

18 (2) For the purposes of this section, removing timber for the
19 purposes of fire suppression consistent with RCW 76.04.750 is
20 considered an authorized activity that does not violate the
21 provisions of this section.

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