

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2093

Chapter 182, Laws of 2015

64th Legislature
2015 Regular Session

WILDLAND FIRE SUPPRESSION

EFFECTIVE DATE: 7/24/2015

Passed by the House April 23, 2015
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 13, 2015
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2015 2:42 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2093** as passed by House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 7, 2015

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2093

AS AMENDED BY THE SENATE

Passed Legislature - 2015 Regular Session

State of Washington **64th Legislature** **2015 Regular Session**

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

READ FIRST TIME 02/20/15.

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 a new section; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.30
7 RCW under the subchapter heading "organization" to read as follows:

8 (1) The commissioner must appoint a local wildland fire liaison
9 that reports directly to the commissioner or the supervisor and
10 generally represents the interests and concerns of landowners and the
11 general public during any fire suppression activities of the
12 department.

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

17 (3) In appointing the local wildland fire liaison, the
18 commissioner must consult with county legislative authorities either
19 directly or through an organization that represents the interests of
20 county legislative authorities.

1 (4) All requirements in this section are subject to the
2 availability of amounts appropriated for the specific purposes
3 described.

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

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

10 (b) The ability to quickly evaluate the availability of local
11 fire district resources in a manner that allows the local resources
12 to be more efficiently and effectively dispatched to wildland fires;
13 and

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

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

21 (3) All requirements in this section are subject to the
22 availability of amounts appropriated for the specific purposes
23 described.

24 (4) This section expires July 1, 2017.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.04
26 RCW under the subchapter heading "administration" to read as follows:

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

34 (2) The commissioner may appoint members to the wildland fire
35 advisory committee as the commissioner determines is the most helpful
36 in the discharge of the commissioner's duties. However, at a minimum,
37 the commissioner must invite the following:

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

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

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

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

11 (e) An individual with the title of fire commissioner whose
12 authority is pursuant to chapter 52.14 RCW;

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

14 (g) A representative of a tribal nation;

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

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

17 (j) 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 (8) All requirements in this section are subject to the
33 availability of amounts appropriated for the specific purposes
34 described.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.04
36 RCW to read as follows:

37 (1)(a) An individual may, consistent with this section, enter
38 privately owned or publicly owned land for the purposes of attempting
39 to extinguish or control a wildland fire, regardless of whether the

1 individual owns the land, when fighting the wildland fire in that
2 particular time and location can be reasonably considered a public
3 necessity due to an imminent danger.

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

12 (c) An individual may enter land under this subsection (1) only
13 if:

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

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

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

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

23 (v) The individual only undertakes measures that are reasonable
24 and necessary until professional wildfire suppression personnel
25 arrives;

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

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

33 (viii) The individual follows the instructions of professional
34 wildland firefighting personnel, including ceasing to engage in
35 firefighting activities, when directed to do so by professional
36 wildland firefighting personnel; and

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

1 (d) Nothing in this section authorizes any person to materially
2 benefit from accessing land or retain any valuable materials that may
3 be collected or harvested during the time the individual attempts to
4 extinguish or control the wildland fire.

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

9 (ii) Activities that may be reasonable under this subsection (1)
10 include, but are not limited to: Using hand tools to clear the ground
11 of debris, operating readily available water hoses, clearing
12 flammable materials from the vicinity of structures, unlocking or
13 opening gates to assist firefighter access, and safely scouting and
14 reporting fire behavior.

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

21 (f) Nothing in this subsection (1) confers a legal or civil duty
22 or obligation on a person to attempt to extinguish or control a
23 wildfire.

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

33 (i) The individual accessing the privately owned or publicly
34 owned land and the individual's personal property, including loss of
35 life;

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

38 (iii) Other landholdings; and

39 (iv) Overall environmental resources.

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

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

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

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

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

14 (3) The department shall:

15 (a) Enforce all laws within this chapter;

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

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

1 (ii) Absent a court order authorizing otherwise, the department
2 may not take possession or control of evidence over the objection of
3 the owner of the evidence if the evidence is used by the owner in
4 conducting a business or in providing an electric utility service and
5 the department's taking possession or control of the evidence would
6 substantially and materially interfere with the operation of the
7 business or provision of electric utility service.

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

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

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

22 (e) Be familiar with all timbered and cut-over areas of the
23 state; (~~and~~)

24 (f) Maximize the effective utilization of local fire suppression
25 assets consistent with section 6 of this act; and

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

28 (4) The department may:

29 (a) Authorize all needful and proper expenditures for forest
30 protection;

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

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

39 (d) Inquire into:

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

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

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

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

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

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.04
32 RCW to read as follows:

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

35 (a) Compile and annually update master lists of qualified
36 wildland fire suppression contractors who have valid incident
37 qualifications for the kind of contracted work to be performed. In
38 order to be included on a master list of qualified wildland fire
39 suppression contractors:

1 (i) Contractors providing fire engines, tenders, crews, or
2 similar resources must have training and qualifications sufficient
3 for federal wildland fire contractor eligibility, including
4 possessing a valid incident qualification card, commonly called a red
5 card; and

6 (ii) Contractors other than those identified in (a)(i) of this
7 subsection must have training and qualifications evidenced by
8 possession of a valid department qualification and safety document,
9 commonly called a blue card, issued to people cooperating with the
10 department pursuant to an agreement;

11 (b) Provide timely advance notification of the dates and
12 locations of department blue card training to all potential wildland
13 fire suppression contractors known to the department and make the
14 training available in several locations that are reasonably
15 convenient for contractors;

16 (c) Make the lists of qualified wildland fire suppression
17 contractors available to county legislative authorities, emergency
18 management departments, and local fire districts;

19 (d) Cooperate with federal wildland firefighting agencies to
20 maximize, based on predicted need, the efficient use of local
21 resources in close proximity to wildland fire incidents;

22 (e) Enter into preemptive agreements with landowners in
23 possession of firefighting capability that may be utilized in
24 wildland fire suppression efforts, including the use of bulldozers,
25 fallers, fuel tenders, potable water tenders, water sprayers, wash
26 trailers, refrigeration units, and buses; and

27 (f) Conduct outreach to provide basic incident command system and
28 wildland fire safety training to landowners in possession of
29 firefighting capability to help ensure that any wildland fire
30 suppression actions taken by private landowners on their own land are
31 accomplished safely and in coordination with any related incident
32 command structure.

33 (2) Nothing in subsection (1) of this section prohibits the
34 department from conducting condensed safety training on the site of a
35 wildland fire in order to utilize available contractors not included
36 on a master list of qualified wildland fire suppression contractors.

37 (3) When entering into preemptive agreements with landowners
38 under this section, the department must ensure that:

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

1 (b) All contractors are, when engaged in fire suppression
2 activities, under the supervision of recognized wildland fire
3 personnel.

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

9 (5) All requirements in this section are subject to the
10 availability of amounts appropriated for the specific purposes
11 described.

12 **Sec. 7.** RCW 76.04.005 and 2014 c 90 s 1 are each reenacted and
13 amended to read as follows:

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

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

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

20 (b) When, due to the effects of disturbance agents, broken, down,
21 dead, or dying trees exist on forest land in sufficient quantity to
22 be likely to further the spread of fire within areas covered by a
23 forest health hazard warning or order issued by the commissioner of
24 public lands under RCW 76.06.180. The term "additional fire hazard"
25 does not include green trees or snags left standing in upland or
26 riparian areas under the provisions of RCW 76.04.465 or chapter 76.09
27 RCW.

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

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

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

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

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

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

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

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

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

21 (11) "Forest landowner," "owner of forest land," "landowner," or
22 "owner" means the owner or the person in possession of any public or
23 private forest land.

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

26 (13) "Incendiary ammunition" means ammunition that is designed to
27 ignite or explode upon impact with or penetration of a target or
28 designed to trace its course in the air with a trail of smoke,
29 chemical incandescence, or fire.

30 (14) "Landowner operation" means every activity, and supporting
31 activities, of a forest landowner and the landowner's agents,
32 employees, or independent contractors or permittees in the management
33 and use of forest land subject to the forest protection assessment
34 under RCW 76.04.610 for the primary benefit of the owner. The term
35 includes, but is not limited to, the growing and harvesting of forest
36 products, the development of transportation systems, the utilization
37 of minerals or other natural resources, and the clearing of land. The
38 term does not include recreational and/or residential activities not
39 associated with these enumerated activities.

1 (15) "Participating landowner" means an owner of forest land
2 whose land is subject to the forest protection assessment under RCW
3 76.04.610.

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

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

10 (18) "Slash burning" means the planned and controlled burning of
11 forest debris on forest lands by broadcast burning, underburning,
12 pile burning, or other means, for the purposes of silviculture,
13 hazard abatement, or reduction and prevention or elimination of a
14 fire hazard.

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

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

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

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

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

Passed by the House April 23, 2015.
Passed by the Senate April 13, 2015.
Approved by the Governor May 7, 2015.
Filed in Office of Secretary of State May 7, 2015.

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