

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5025

53rd Legislature
1993 Regular Session

Passed by the Senate April 19, 1993
YEAS 38 NAYS 4

President of the Senate

Passed by the House April 13, 1993
YEAS 61 NAYS 35

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5025** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5025

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Natural Resources (originally sponsored by Senator Owen)

Read first time 02/05/93.

1 AN ACT Relating to forest fires; amending RCW 76.04.495 and
2 76.04.015; and adding a new section to chapter 76.04 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.04 RCW
5 to read as follows:

6 The department when acting, in good faith, in its statutory
7 capacity as a fire prevention and suppression agency, is carrying out
8 duties owed to the public in general and not to any individual person
9 or class of persons separate and apart from the public. Nothing
10 contained in this title, including but not limited to any provision
11 dealing with payment or collection of forest protection or fire
12 suppression assessments, may be construed to evidence a legislative
13 intent that the duty to prevent and suppress forest fires is owed to
14 any individual person or class of persons separate and apart from the
15 public in general. This section does not alter the department's duties
16 and responsibilities as a landowner.

17 **Sec. 2.** RCW 76.04.495 and 1986 c 100 s 33 are each amended to read
18 as follows:

1 (1) Any person, firm, or corporation: (a) Whose negligence is
2 responsible for the starting or existence of a fire which spreads on
3 forest land; or (b) who creates or allows an extreme fire hazard under
4 RCW 76.04.660 to exist and which hazard contributes to the spread of a
5 fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist
6 and which debris contributes to the spread of fire, shall be liable for
7 any reasonable expenses made necessary by (a), (b), or (c) of this
8 subsection (~~incurred by~~). The state, a municipality, (~~or~~) a forest
9 protective association, or any fire protection agency of the United
10 States may recover such reasonable expenses in fighting the fire,
11 together with costs of investigation and litigation including
12 reasonable attorneys' fees and taxable court costs, if the expense was
13 authorized or subsequently approved by the department. The authority
14 granted under this subsection allowing the recovery of reasonable
15 expenses incurred by fire protection agencies of the United States
16 shall apply only to such expenses incurred after June 30, 1993.

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

30 **Sec. 3.** RCW 76.04.015 and 1986 c 100 s 2 are each amended to read
31 as follows:

32 (1) The department may, at its discretion, appoint trained
33 personnel possessing the necessary qualifications to carry out the
34 duties and supporting functions of the department and may determine
35 their respective salaries.

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

38 (3) The department shall:

1 (a) Enforce all laws within this chapter;

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

4 (c) Investigate the origin and cause of all forest fires to
5 determine whether either a criminal act or negligence by any person,
6 firm, or corporation caused the starting, spreading, or existence of
7 the fire. In conducting investigations, the department shall work
8 cooperatively, to the extent possible, with utilities, property owners,
9 and other interested parties to identify and preserve evidence. Except
10 as provided otherwise in this subsection, the department in conducting
11 investigations is authorized, without court order, to take possession
12 or control of relevant evidence found in plain view and belonging to
13 any person, firm, or corporation. To the extent possible, the
14 department shall notify the person, firm, or corporation of its intent
15 to take possession or control of the evidence. The person, firm, or
16 corporation shall be afforded reasonable opportunity to view the
17 evidence and, before the department takes possession or control of the
18 evidence, also shall be afforded reasonable opportunity to examine,
19 document, and photograph it. If the person, firm, or corporation
20 objects in writing to the department's taking possession or control of
21 the evidence, the department must either return the evidence within
22 seven days after the day on which the department is provided with the
23 written objections or obtain a court order authorizing the continued
24 possession or control.

25 Absent a court order authorizing otherwise, the department may not
26 take possession or control of evidence over the objection of the owner
27 of the evidence if: (i) The evidence is used by the owner in conducting
28 a business or in providing an electric utility service; and (ii) the
29 department's taking possession or control of the evidence would
30 substantially and materially interfere with the operation of the
31 business or provision of electric utility service.

32 Absent a court order authorizing otherwise, the department may not
33 take possession or control of evidence over the objection of an
34 electric utility when the evidence is not owned by the utility but has
35 caused damage to property owned by the utility. However, this
36 paragraph does not apply if the department has notified the utility of
37 its intent to take possession or control of the evidence and provided
38 the utility with reasonable time to examine, document, and photograph
39 the evidence.

1 Only personnel qualified to work on electrical equipment may take
2 possession or control of evidence owned or controlled by an electric
3 utility;

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

6 (e) Be familiar with all timbered and cut-over areas of the state;
7 and

8 (f) Regulate and control the official actions of its employees, the
9 wardens, and the rangers.

10 (4) The department may:

11 (a) Authorize all needful and proper expenditures for forest
12 protection;

13 (b) Adopt rules for the prevention, control, and suppression of
14 forest fires as it considers necessary including but not limited to:
15 Fire equipment and materials; use of personnel; and fire prevention
16 standards and operating conditions including a provision for reducing
17 these conditions where justified by local factors such as location and
18 weather;

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

21 (d) Inquire into:

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

24 (ii) The extent to which timber lands are being destroyed by fire
25 and the damage thereon.

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

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