
SECOND SUBSTITUTE SENATE BILL 6766

State of Washington 61st Legislature 2010 1st Special Session

By Senate Ways & Means (originally sponsored by Senators Hargrove, Swecker, Hatfield, Prentice, and Brown)

READ FIRST TIME 03/18/10.

1 AN ACT Relating to forest fire prevention and suppression; amending
2 RCW 76.04.005, 76.04.165, 76.04.167, 76.04.016, and 76.04.610; and
3 providing an effective date.

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

5 **Sec. 1.** RCW 76.04.005 and 2007 c 480 s 12 are each amended to read
6 as follows:

7 (~~As used in this chapter, the following terms have the meanings~~
8 ~~indicated~~) The definitions in this section apply throughout this
9 chapter unless the context clearly requires otherwise.

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

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

14 (b) When, due to the effects of disturbance agents, broken, down,
15 dead, or dying trees exist on forest land in sufficient quantity to be
16 likely to further the spread of fire within areas covered by a forest
17 health hazard warning or order issued by the commissioner of public
18 lands under RCW 76.06.180. The term "additional fire hazard" does not

1 include green trees or snags left standing in upland or riparian areas
2 under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

3 (2) "Closed season" means the period between April 15th and October
4 15th, unless the department designates different dates because of
5 prevailing fire weather conditions.

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

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

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

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

19 (7) "Forest debris" includes forest slash, chips, and any other
20 vegetative residue resulting from activities on forest land.

21 (8) "Forest fire service" includes all wardens, rangers, and other
22 persons employed especially for preventing or fighting forest fires.

23 (9) "Forest land" means any unimproved lands which have enough
24 trees, standing or down, or flammable material, to constitute in the
25 judgment of the department, a fire menace to life or property.
26 Sagebrush and grass areas east of the summit of the Cascade mountains
27 may be considered forest lands when such areas are adjacent to or
28 intermingled with areas supporting tree growth. Forest land, for
29 protection purposes, does not include structures.

30 (10) "Forest landowner," "owner of forest land," "landowner," or
31 "owner" means the owner or the person in possession of any public or
32 private forest land.

33 (11) "Forest material" means forest slash, chips, timber, standing
34 or down, or other vegetation.

35 (12) "Landowner operation" means every activity, and supporting
36 activities, of a forest landowner and the landowner's agents,
37 employees, or independent contractors or permittees in the management
38 and use of forest land subject to the forest protection assessment

1 under RCW 76.04.610 for the primary benefit of the owner. The term
2 includes, but is not limited to, the growing and harvesting of forest
3 products, the development of transportation systems, the utilization of
4 minerals or other natural resources, and the clearing of land. The
5 term does not include recreational and/or residential activities not
6 associated with these enumerated activities.

7 (13) "Participating landowner" means an owner of forest land whose
8 land is subject to the forest protection assessment under RCW
9 76.04.610.

10 (14) "Slash" means organic forest debris such as tree tops, limbs,
11 brush, and other dead flammable material remaining on forest land as a
12 result of a landowner operation.

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

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

21 (17) "Improved lands" means property on which a structure is
22 located but does not include roads, bridges, forest lands, or
23 unimproved lands.

24 (18)(a) "Unimproved lands" means those lands ((that will support
25 grass, brush and tree growth, or other flammable material when such
26 lands are not cleared or cultivated and, in the opinion of the
27 department, are a fire menace to life and property)) occupied by shrub-
28 steppe vegetation and forest lands devoted primarily to production of
29 livestock or agricultural commodities for commercial purposes.

30 (b) "Unimproved lands" does not include improved lands.

31 **Sec. 2.** RCW 76.04.165 and 1995 c 151 s 2 are each amended to read
32 as follows:

33 (1) The legislature finds and declares that forest and shrub-steppe
34 lands within the state are increasingly being used for residential
35 purposes; that the risk to life and property is increasing from forest
36 fires which may destroy developed property; that, based on the primary
37 missions for the respective fire control agencies established in this

1 chapter, adjustment of the geographic areas of responsibility has not
2 kept pace with the increasing use of forest lands for residential
3 purposes; and that the department should work with the state's other
4 fire control agencies to define geographic areas of responsibility that
5 are more consistent with their respective primary missions.

6 (2) To accomplish the purposes of subsection (1) of this section,
7 the department shall establish a procedure to clarify its geographic
8 areas of responsibility. The areas of department protection shall be
9 called forest protection zones and shall not necessarily include all
10 parcels paying a per parcel assessment as specified in RCW 76.04.610.

11 (a) Other than as specified in (b) of this subsection, the
12 department shall protect all forest land which the department is
13 obligated to protect and all state and privately owned unimproved lands
14 located outside of fire protection districts as of January 1, 2010.

15 (b) The forest protection zones shall include all forest land and
16 nonforested, unimproved land which the department is obligated to
17 protect but shall not include forest land and nonforested, unimproved
18 land within rural fire districts or municipal fire districts which
19 affected local fire control agencies agree, by mutual consent with the
20 department, is not appropriate for department protection. Forest land
21 and nonforested, unimproved land not included within a forest
22 protection zone established by mutual agreement of the department and
23 a rural fire district or a municipal fire district shall not be
24 assessed under RCW 76.04.610 or 76.04.630.

25 (3) After the department and any affected local fire protection
26 agencies have agreed on the boundary of a forest protection zone, the
27 department shall establish the boundary by rule under chapter 34.05
28 RCW.

29 (4) Except by agreement of the affected parties, the establishment
30 of forest protection zones shall not alter any mutual aid agreement.

31 **Sec. 3.** RCW 76.04.167 and 2001 c 279 s 1 are each amended to read
32 as follows:

33 (1) The legislature hereby finds and declares that:

34 (a) Forest wildfires are a threat to public health and safety and
35 can cause catastrophic damage to public and private resources,
36 including clean air, clean water, fish and wildlife habitat, timber

1 resources, forest soils, scenic beauty, recreational opportunities,
2 economic and employment opportunities, structures, and other
3 improvements;

4 (b) Forest landowners and the public have a shared interest in
5 protecting forests and forest resources by preventing and suppressing
6 forest wildfires;

7 (c) A recent independent analysis of the state fire program
8 considered it imperative to restore a more equitable split between the
9 general fund and forest protection assessments;

10 (d) Without a substantial increase in forest protection funds, the
11 state's citizens will be paying much more money for emergency fire
12 suppression; and

13 (e) It is therefore the intent of the legislature that the costs of
14 fire protection be equitably shared between the forest protection
15 assessment account and state contributions to ensure that there will be
16 sufficient firefighters who are equipped and trained to respond quickly
17 to fires in order to keep fires small and manage those large fires that
18 do occur. In recognition of increases in landowner assessments, the
19 legislature declares its intent that increases in the state's share for
20 forest protection should be provided to stabilize the funding for the
21 forest protection program, and that sufficient state funds should be
22 committed to the forest protection program so that the recommendations
23 contained in the 1997 tridata report can be implemented on an equitable
24 basis.

25 (2) The legislature hereby finds and declares that it is in the
26 public interest to establish and maintain a complete, cooperative, and
27 coordinated forest fire protection and suppression program for the
28 state; that, second only to saving lives, the primary mission of the
29 department is protecting forest resources and suppressing forest and
30 nonforested, unimproved land wildfires; that a primary mission of rural
31 fire districts and municipal fire departments is protecting improved
32 property and suppressing structural fires; and that the most effective
33 way to protect structures is for the department to focus its efforts
34 and resources on aggressively suppressing forest wildfires.

35 (3) The legislature acknowledges that the department may use
36 discretionary authority to take actions that may prevent approaching
37 wildfire from destroying or damaging homes and other improvements,

1 although the legislature finds that this is not the primary mission of
2 the department as specified in subsection (2) of this section.

3 (4) The legislature also acknowledges the natural role of fire in
4 forest ecosystems, and finds and declares it in the public interest to
5 use fire under controlled conditions to prevent wildfires by
6 maintaining healthy forests and eliminating sources of fuel.

7 **Sec. 4.** RCW 76.04.016 and 1993 c 196 s 1 are each amended to read
8 as follows:

9 The department when acting, in good faith, in its statutory
10 capacity as a fire prevention and suppression agency, is carrying out
11 duties owed to the public in general and not to any individual person
12 or class of persons separate and apart from the public. Nothing
13 contained in this title, including but not limited to any provision
14 dealing with payment or collection of forest protection or fire
15 suppression assessments or actions taken by the department within its
16 discretionary authority that may prevent approaching wildfire from
17 destroying or damaging personal property, may be construed to evidence
18 a legislative intent that the duty to prevent and suppress forest fires
19 or the use of discretionary authority to take actions that may prevent
20 destruction or damage to personal property is owed to any individual
21 person or class of persons separate and apart from the public in
22 general. This section does not alter the department's duties and
23 responsibilities as a landowner.

24 **Sec. 5.** RCW 76.04.610 and 2007 c 110 s 1 are each amended to read
25 as follows:

26 (1)(a) The department shall annually impose a per parcel assessment
27 of four dollars and ninety-five cents on each taxable parcel of land
28 within the state of Washington, except parcels that are exempt from
29 property tax under RCW 84.36.015 or parcels that are exempt in whole or
30 in part from property tax under RCW 84.36.381. Only those parcels
31 identified in (b) of this subsection may be provided fire protection
32 services by the department.

33 (b) If any owner of forest land or nonforested, unimproved land
34 outside a fire protection district boundary but within a forest
35 protection zone neglects or fails to provide adequate fire protection
36 as required by RCW 76.04.600, the department shall provide such

1 protection and shall annually impose the following assessments on each
2 parcel of such land: (i) ~~A ((flat fee assessment of seventeen dollars~~
3 ~~and fifty cents; and (ii) twenty-seven))~~ per acre assessment of twenty-
4 seven cents on each acre ((exceeding fifty acres)) within parcels lying
5 west of Okanogan, Chelan, Kittitas, Yakima, and Klickitat counties; and
6 (ii) a per acre assessment of twenty-nine cents on each acre within
7 parcels not specified in (b)(i) of this subsection.

8 ~~((b) Assessors may, at their option, collect the assessment on tax~~
9 ~~exempt lands. If the assessor elects not to collect the assessment,~~
10 ~~the department may bill the landowner directly.))~~

11 (2) ~~((An owner who has paid assessments on two or more parcels,~~
12 ~~each containing fewer than fifty acres and each within the same county,~~
13 ~~may obtain the following refund:~~

14 (a) ~~If all the parcels together contain less than fifty acres, then~~
15 ~~the refund is equal to the flat fee assessments paid, reduced by the~~
16 ~~total of (i) seventeen dollars and (ii) the total of the amounts~~
17 ~~retained by the county from such assessments under subsection (5) of~~
18 ~~this section.~~

19 (b) ~~If all the parcels together contain fifty or more acres, then~~
20 ~~the refund is equal to the flat fee assessments paid, reduced by the~~
21 ~~total of (i) seventeen dollars, (ii) twenty-seven cents for each acre~~
22 ~~exceeding fifty acres, and (iii) the total of the amounts retained by~~
23 ~~the county from such assessments under subsection (5) of this section.~~

24 ~~Applications for refunds shall be submitted to the department on a~~
25 ~~form prescribed by the department and in the same year in which the~~
26 ~~assessments were paid. The department may not provide refunds to~~
27 ~~applicants who do not provide verification that all assessments and~~
28 ~~property taxes on the property have been paid. Applications may be~~
29 ~~made by mail.~~

30 ~~In addition to the procedures under this subsection,))~~ Property
31 owners as identified in subsection (1)(b) of this section with multiple
32 parcels in ((a single county who qualify for a refund under this
33 section may apply)) one county may elect to pay no more than ten parcel
34 assessments provided that the property owner applies to the department
35 on an application listing all the parcels owned in order to have the
36 per acreage assessment computed on all parcels but to have the per
37 parcel assessment billed to a single parcel. ((Property owners with

1 ~~the following number of parcels may apply to the department in the year~~
2 ~~indicated:~~

3 Year	Number of Parcels
4 2002	10 or more parcels
5 2003	8 or more parcels
6 2004 and thereafter	6 or more parcels))

7 The department must compute the correct assessment and allocate one
8 parcel in the county to use to collect the assessment. The county must
9 then bill the forest fire protection assessment on that one allocated
10 identified parcel. The landowner is responsible for notifying the
11 department of any changes in parcel ownership.

12 (3) ~~((Beginning January 1, 1991,))~~ Under the administration and at
13 the discretion of the department up to two hundred thousand dollars per
14 year of this assessment shall be used in support of those rural fire
15 districts assisting the department in fire protection services on
16 forest lands.

17 (4) For the purpose of this chapter, the department may divide the
18 forest lands of the state, or any part thereof, into districts, for
19 fire protection and assessment purposes, may classify lands according
20 to the character of timber prevailing, and the fire hazard existing,
21 and place unprotected lands under the administration of the proper
22 district. Amounts paid or contracted to be paid by the department for
23 protection of forest lands from funds at its disposal shall be a lien
24 upon the property protected, unless reimbursed by the owner within ten
25 days after October 1st of the year in which they were incurred. The
26 department shall be prepared to make statement thereof, upon request,
27 to a forest owner whose own protection has not been previously approved
28 as to its adequacy, the department shall report the same to the
29 assessor of the county in which the property is situated. The assessor
30 shall extend the amounts upon the tax rolls covering the property, and
31 upon authorization from the department shall levy the forest protection
32 assessment against the amounts of unimproved land as shown in each
33 ownership on the county assessor's records. The assessor may then
34 segregate on the records to provide that the improved land and
35 improvements thereon carry the millage levy designed to support the
36 rural fire protection districts as provided for in RCW 52.16.170.

37 (5) The amounts assessed shall be collected at the time, in the
38 same manner, by the same procedure, and with the same penalties

1 attached that general state and county taxes on the same property are
2 collected, except that errors in assessments may be corrected at any
3 time by the department certifying them to the treasurer of the county
4 in which the land involved is situated. Assessments shall be known and
5 designated as assessments of the year in which the amounts became
6 reimbursable. Upon the collection of assessments the county treasurer
7 shall place fifty cents of the total assessments paid on a parcel for
8 fire protection into the county current expense fund to defray the
9 costs of listing, billing, and collecting these assessments. The
10 treasurer shall then transmit the balance to the department.
11 Collections shall be applied against expenses incurred in carrying out
12 the provisions of this section, including necessary and reasonable
13 administrative costs incurred by the department in the enforcement of
14 these provisions. The department may also expend sums collected from
15 owners of forest lands or received from any other source for necessary
16 administrative costs in connection with the enforcement of RCW
17 76.04.660.

18 (6) Beginning in fiscal year 2011, the department shall transfer
19 three percent of the revenue collected from the parcel assessments
20 specified in subsection (1) of this section into the military
21 department active state service account, created in RCW 38.40.220, for
22 firefighting training.

23 (7) When land against which forest protection assessments are
24 outstanding is acquired for delinquent taxes and sold at public
25 auction, the state shall have a prior lien on the proceeds of sale over
26 and above the amount necessary to satisfy the county's delinquent tax
27 judgment. The county treasurer, in case the proceeds of sale exceed
28 the amount of the delinquent tax judgment, shall immediately remit to
29 the department the amount of the outstanding forest protection
30 assessments.

31 ~~((7) All nonfederal public bodies owning or administering forest~~
32 ~~land included in a forest protection zone shall)) (8) Forest land and~~
33 ~~nonforested, unimproved lands located outside of a fire protection~~
34 ~~district boundary as of January 1, 2010, and owned or administered by~~
35 ~~nonfederal public bodies or having tax-exempt status shall be protected~~
36 ~~from wildfire by the department and shall pay the forest protection~~
37 ~~assessments provided in this section and the special forest fire~~
38 ~~suppression account assessments under RCW 76.04.630. The forest~~

1 protection assessments and special forest fire suppression account
2 assessments shall be payable by nonfederal public bodies from available
3 funds within thirty days following receipt of the written notice from
4 the department which is given after October 1st of the year in which
5 the protection was provided. Unpaid assessments are not a lien against
6 the nonfederal publicly owned land but shall constitute a debt by the
7 nonfederal public body to the department and are subject to interest
8 charges at the legal rate.

9 ~~((+8))~~ (9) A public body, having failed to previously pay the
10 forest protection assessments required of it by this section, which
11 fails to suppress a fire on or originating from forest lands owned or
12 administered by it, is liable for the costs of suppression incurred by
13 the department or its agent and is not entitled to reimbursement of
14 costs incurred by the public body in the suppression activities.

15 ~~((+9))~~ (10) The department may adopt rules to implement this
16 section, including, but not limited to, rules on levying and collecting
17 forest protection assessments.

18 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2011.

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