

SENATE BILL REPORT

ESSB 5972

As Amended by House, March 11, 2014

Title: An act relating to specifying recovery for fire damages to public or private forested lands.

Brief Description: Specifying recovery for fire damages to public or private forested lands.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pearson, Rolfes, Hargrove, Mullet, Sheldon, Hewitt, Cleveland, Honeyford, Fain, Hill, Braun, Fraser, Litzow, Parlette, Frockt and Kline; by request of Commissioner of Public Lands).

Brief History:

Committee Activity: Natural Resources & Parks: 1/14/14, 1/21/14 [DPS, DNP, w/oRec].

Passed Senate: 2/17/14, 35-12.

Passed House: 3/11/14, 98-0.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5972 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pearson, Chair; Dansel, Hargrove and Hewitt.

Minority Report: Do not pass.

Signed by Senator Kline.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette.

Staff: Curt Gavigan (786-7437)

Background: Statutory Forest Fire Liability. In general, failure by a landowner to take reasonable care to prevent fire from spreading creates liability to any person suffering damage as a result.

More specifically, a person whose negligence is responsible for the starting or existence of a fire is liable for the reasonable expenses of the responding firefighting entity. Likewise, those with knowledge of the existence of a fire must undertake reasonable suppression efforts or face liability for subsequent firefighting costs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Common Law Forest Fire Liability. The longstanding common law rule is that a landowner is liable for damages proximately caused by negligence in starting or controlling a fire. In general, recoverable damages are those proximately resulting from that negligence. In determining damages, Washington courts have stated the intent to place the injured party as nearly as possible in the condition they would be had the injury not occurred.

The measure of property damage in a particular case is based on the type and extent of the damage. Common methods recognized by Washington courts include the following: the reasonable cost of restoration, which is generally applied in cases where damage can be repaired; or the difference between the value of the property before and after the injury, which is generally applied when damage is irreparable. For personal property damage that can be repaired, the general measure of damages is the lesser of the cost of restoration or the diminution in property value. While establishing these general rules, state courts have exercised flexibility in awarding damages depending on the particular circumstances.

Summary of Engrossed Substitute Bill: Establishes an Exclusive Statutory Cause of Action. A new statutory cause of action is established for property damage to public or private forested lands (forested lands) resulting from a fire that started on or spread from forested lands. An affected owner of forested lands must bring this action in superior court. When it applies, the cause of action is the exclusive remedy for fire-related property damage.

Liability and Recoverable Damages. Liability under the new cause of action attaches where a person's action or inaction relates to the start or spread of a fire, constitutes negligence or a higher degree of fault, and is a proximate cause of the property damage.

When liability attaches, recoverable property damages are limited to the following:

- either (1) the difference in fair market value of the property immediately before and after the fire or (2) the reasonable costs of restoration not to exceed the difference in the fair market value of the property immediately before and after the fire. The fair market value determination for real property must be made by a state-certified real estate appraiser after evaluation of specified aspects of the property and consistent with standards of professional appraisal practice applicable to these appraisers;
- reasonable fire suppression expenses, unless otherwise provided for in the fire protection statutes; and
- any other objectively verifiable monetary loss, such as loss of earnings, loss of use of property, and loss of business and employment opportunities. These losses may not duplicate other types of recovery, and must be established by evidence of pre-fire investments, income, expenses, or contracts.

Application. The new cause of action applies to property damage to forested lands resulting from a fire that started on or spread from forested lands.

Forested lands are those capable of growing tree species suitable for producing wood-based forest products, regardless of the existing land use. However, the term excludes lands where the predominant physical use of the land is inconsistent with growing, conserving, or preserving these tree species. Examples of inconsistent use include home sites of up to ten acres, airports, parking lots, cropfields, pastures, roads, and railroad and utility rights of way.

Other terms are defined. Corresponding changes are made to several statutes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Similar bills have been enacted in California, Idaho, Montana, and Oregon. This bill encourages the retention of forested land and enables judicial efficiency by establishing a statutory framework for the kinds of damages that can be recovered from fires on forested land. The bill retains the one-to-one scale of fire damages on forest lands that has been recognized in this state to date. This bill attempts to provide protection against federal court cases that have emerged elsewhere and recognized damages in excess of market value. It also recognizes conservation based market values.

CON: There are concerns about the scope of the term forested lands, as well as how public utilities might be liable. This bill could lead to under compensation of damages to public lands, inappropriately requires a choice between diminution in value and restoration costs, and should recognize broader land values such as environmental and habitat values.

OTHER: There is need for further discussion about how damages are defined in the bill to ensure some flexibility for non-timber damages, as well as for the potential to capture habitat and wildlife values.

Persons Testifying: PRO: Tom Nelson, Sierra Pacific Industries; Debora Munguia, WA Forest Protection Assn.; Galen Schuler, Green Diamond Resource Company; Heather Hanson, WA Farm Forestry Assn.; Clay Sprague, WA Dept. of Fish and Wildlife; Mary Verner, WA Dept. of Natural Resources.

CON: David Arbaugh, Public Utility Risk Management Services; Miguel Perez-Gibson, WA Environmental Council.

OTHER: Michael Temple, WA State Assn. for Justice; Leda Chahim, Forterra.

House Amendment(s): Modifies recoverable damages under the statutory cause of action as follows:

- Removes language stating that damages for the reasonable costs of restoring the property may not exceed the difference in the fair market value of the damaged property immediately before and after the fire. Provides instead that damages are recoverable for the reasonable costs of restoring the property to the extent permitted by Washington law;
- Removes language stating that recovery for other monetary losses, such as out-of-pocket expenses, loss of earnings, and loss of use of property, must be established by evidence of pre-fire investments, income, expenses, or contracts specific to the damaged property; and

- Provides that in the case of an action brought by an Indian tribe for recovery of damages from injury to archaeological objects, archaeological sites, or historic archeological resources, recoverable damages include damages as measured in accordance with an existing rule of the Department of Archaeology and Historic Preservation that provides for identification of an independent investigator and necessary site restoration actions.