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**HOUSE BILL 1508**

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

**By** Representatives Kretz, Blake, Short, Reykdal, and Condotta

AN ACT Relating to providing permissive authority for counties to assume authority over local forest fire management; amending RCW 76.04.610, 76.04.630, 76.04.015, and 76.04.016; and adding a new section to chapter 76.04 RCW.

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

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

(1) Any county may, by action of its legislative authority, create a local forest fire protection division that is responsible for preventing and responding to forest fires in the county. If created, the local forest fire protection division assumes primary command over any fire response in the county and assumes independent decision-making authority over all local aspects of forest fire prevention and response.

(2) The department must be notified of the creation of a local forest fire protection division within thirty days of its creation.

(3) Two or more counties may organize into a single local forest fire protection division.

(4) The department must, upon the request of a county's local forest fire protection division, assist the county in any fire response necessary to protect public safety.

**Sec.**  RCW 76.04.610 and 2012 2nd sp.s. c 7 s 922 are each amended to read as follows:

(1)(a) If any owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (i) A flat fee assessment of seventeen dollars and fifty cents; and (ii) twenty-seven cents on each acre exceeding fifty acres.

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

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

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection ((~~(5)~~))(7) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars, (ii) twenty-seven cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection ((~~(5)~~))(7) of this section.

(3) Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

(4)(a) In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. ((~~Property owners with the following number of parcels may apply to the department in the year indicated:~~

|  |  |
| --- | --- |
| ~~Year~~ | ~~Number of Parcels~~ |
| ~~2002~~ | ~~10 or more parcels~~ |
| ~~2003~~ | ~~8 or more parcels~~ |
| ~~2004 and thereafter~~ | ~~6 or more parcels~~)) |

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

((~~(3) Beginning January 1, 1991,~~))(5) Under the administration and at the discretion of the department, up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

((~~(4)~~))(6) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forest lands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

((~~(5)~~))(7)(a) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable.

(b) Except for counties that have created a local forest fire protection division under section 1 of this act, upon the collection of assessments, the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department.

(c) For counties that have created a local forest fire protection division under section 1 of this act, the county treasurer shall place all collections in a local account designated by the county legislative authority to be used exclusively for local forest fire prevention and response.

(d) Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

((~~(6)~~))(8) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state or, if appropriate, the county shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department or the county the amount of the outstanding forest protection assessments.

((~~(7)~~))(9)(a) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided.

(b) Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department or the appropriate county and are subject to interest charges at the legal rate. ((~~During the 2011-2013 fiscal biennium, the forest fire protection assessment account may be appropriated to The Evergreen State College for analysis and recommendations to improve the efficiency and effectiveness of the state's mechanisms for funding fire prevention and suppression activities.~~

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

((~~(9)~~))(11) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments.

**Sec.**  RCW 76.04.630 and 2010 1st sp.s. c 7 s 129 are each amended to read as follows:

(1) There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

(2) The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

(3) When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

(4)(a) This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars.

(b) The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments established under this subsection may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations.

(c) Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments.

(d) Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

(e) Any assessments collected under this chapter in a county that has created a local forest fire protection division under section 1 of this act must be transferred to the county where the assessments were collected at least once per fiscal year.

(5) When the department determines that a forest fire was started in the course of or as a result of a landowner operation, the determination shall be final, unless, within ninety days of the notification, or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598.

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

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

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

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires in counties that have not created a local forest fire protection division under section 1 of this act;

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

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

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

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

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

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

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

(4) The department may:

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

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

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

(d) Inquire into:

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

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

(e)(i) Provide fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by the department or another state agency, but only to the extent that providing these services does not interfere with or detract from the obligations set forth in subsection (3) of this section.

(ii) If the department provides fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by another state agency, the department must be fully reimbursed for the work through a cooperative agreement as provided for in RCW 76.04.135(1).

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

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

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

The department, and any county that has created a local forest fire protection division under section 1 of this act, when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner.

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