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**HOUSE BILL 1677**

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

**By** Representatives Short, Kretz, and Schmick

AN ACT Relating to giving preference to using the nearest available qualified firefighters upon notification of a forest fire; amending RCW 76.04.015; reenacting and amending RCW 43.43.963 and 76.04.005; adding a new section to chapter 76.04 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that preventing the spread of wildfires through prompt fire suppression efforts is essential to protecting homes, farms, and other property, to maintaining rural Washington communities, to preserving wildlife and wildlife habitat, and to defending water quality from fire-triggered landslides and sediment. In order to ensure that the state minimizes wildfire-related losses by responding to fire reports quickly and effectively, it is the intent of the legislature to direct the department of natural resources to utilize qualified local firefighting resources, as identified by each county, whenever the department is overburdened by its firefighting responsibilities and is unable to respond to suppress a fire in a timely manner.

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

(1)(a) The county commissioners of each county in the state shall establish and maintain a list of private contract firefighters, firms, corporations, and individuals qualified and available to provide fire suppression services in each county.

(b) In developing the list of entities in (a) of this subsection, the county commissioners must consider the entities' firefighting experience, knowledge of local terrain, geography, and community resources, and ownership of or access to and experience with equipment used in fire suppression. Each county must update this list and provide it to the department by June 1st of each year. Each county must also provide updated versions of this list to the county's local organization for emergency services or management by June 1st of each year.

(c) Based on the lists submitted by the county commissioners, the department must compile and maintain a statewide list, to be organized by the regions identified in RCW 43.43.963, of private contract firefighters, firms, corporations, and individuals in each county.

(2) Within one hour of receiving notification or otherwise learning of an active fire, the department must determine whether government resources are available to be deployed for initial suppression. If the department determines that it does not have sufficient deployable resources available to suppress the fire during initial suppression, it must make contact with the local organization or organizations for emergency services or management to coordinate the utilization of persons or entities on the list developed pursuant to subsection (1) of this section that are available and qualified for the needed initial suppression support, and that are able to respond most quickly to the fire in question as a result of geographic proximity to the fire.

(3) No reimbursement to persons or entities who perform fire suppression activities pursuant to this section is allowed unless the state fire services mobilization plan is subsequently mobilized pursuant to RCW 43.43.962 as a result of the fire for which the suppression activities were performed.

(4) No civil liability may be imposed by any court on the state, the department, or the officers and employees of the state or department for any direct or proximate adverse impacts resulting from the actions taken under this section during initial suppression, or the actions and activities of the persons or entities utilized by the department under subsection (2) of this section during initial suppression, except upon proof of gross negligence or willful or wanton misconduct by the department, its employees, or the persons or entities utilized by the department under subsection (2) of this section. The barrier to civil liability created by this subsection includes, but is not limited to, impacts on:

(a) The persons or entities utilized during initial suppression and their personal property;

(b) Any structures, land, or vegetation alterations by persons or entities accessing department-managed land;

(c) Other landholdings; and

(d) Overall environmental resources.

**Sec.**  RCW 43.43.963 and 2010 1st sp.s. c 7 s 48 and 2010 c 38 s 2 are each reenacted and amended to read as follows:

(1) Regions within the state are initially established as follows but may be adjusted as necessary by the state fire marshal:

(a) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;

(b) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, and Lincoln counties;

(c) Olympic region - Clallam and Jefferson counties;

(d) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;

(e) Southeast region - Chelan, Douglas, Kittitas, Grant, Adams, Whitman, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties;

(f) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties; and

(g) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

(2)(a) There is created a regional fire defense board within each region created in subsection (1) of this section.

(b) The regional fire defense boards shall consist of two members from each county in the region. One member from each county shall be appointed by the county fire chiefs' association or, in the event there is no such county association, by the county's legislative authority. Each county's office of emergency management or, in the event there is no such office, the county's legislative authority shall select the second representative to the regional board. The department of natural resources fire control chief shall appoint a representative from each department of natural resources region to serve as a member of the appropriate regional fire defense board.

(c) Members of each regional board will select a chairperson and secretary as officers. Members serving on the regional boards do so in a voluntary capacity and are not eligible for reimbursement for meeting-related expenses from the state.

(3)(a) Regional defense boards shall develop regional fire service plans that include provisions for organized fire agencies to respond across municipal, county, or regional boundaries.

(b) Each regional plan shall be consistent with the incident command system, the Washington state fire services mobilization plan, the requirements of this section, and regional response plans already adopted and in use in the state. The regional boards shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional fire service plan.

(c) Each regional fire service plan must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW 76.04.015, 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.

(d) Each regional fire service plan must include a strategy to utilize geographically convenient private contract firefighters and other individuals available to provide fire suppression services pursuant to section 2 of this act.

(e) Each regional fire service plan shall be approved by the director of fire protection.

**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;

(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) 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. 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 and consistent with the requirement to utilize the nearest available and qualified personnel pursuant to section 2 of this act, 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 76.04.005 and 2014 c 90 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) "Initial suppression" means the period of time consisting of the first ten hours after the department receives notification of or otherwise learns of an active forest fire.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**