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HOUSE BILL 2093

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Kretz, Short, Blake, Buys, and Condotta

Read first time 02/11/15. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to wildland fire suppression; amending RCW  
2 76.04.015; reenacting and amending RCW 76.04.005; adding a new  
3 section to chapter 43.30 RCW; adding new sections to chapter 76.04  
4 RCW; creating a new section; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.30  
7 RCW under the subchapter heading "organization" to read as follows:

8 (1) The commissioner must appoint a local wildland fire liaison  
9 that reports directly to the commissioner or the supervisor and  
10 generally represents the interests and concerns of landowners and the  
11 general public during any fire suppression activities of the  
12 department.

13 (2) The role of the local wildland fire liaison is to provide  
14 advice to the commissioner on issues such as access to land during  
15 fire suppression activities, the availability of local fire  
16 suppression assets, environmental concerns, and landowner interests.

17 (3) In appointing the local wildland fire liaison, the  
18 commissioner must consult with county legislative authorities either  
19 directly or through an organization that represents the interests of  
20 county legislative authorities.

1        NEW SECTION.     **Sec. 2.**     (1) The local wildland fire liaison  
2 created in section 1 of this act must prepare a report to the  
3 commissioner of public lands by December 31, 2015, that provides  
4 recommendations regarding:

5        (a) Opportunities for the department of natural resources to  
6 increase training with local fire protection districts;

7        (b) The ability to quickly evaluate the availability of local  
8 fire district resources in a manner that allows the local resources  
9 to be more efficiently and effectively dispatched to wildland fires;  
10 and

11       (c) Opportunities to increase and maintain the viability of local  
12 fire suppression assets.

13       (2) The department of natural resources must issue a report to  
14 the legislature consistent with RCW 43.01.036 by October 31, 2016,  
15 that summarizes the recommendations of the local wildland fire  
16 liaison, details steps taken to implement the recommendations, and  
17 offers an analyses of the results on the ground.

18       (3) This section expires July 1, 2017.

19       NEW SECTION.     **Sec. 3.**     A new section is added to chapter 76.04  
20 RCW under the subchapter heading "administration" to read as follows:

21       (1) The commissioner must appoint and maintain a wildland fire  
22 advisory committee to generally advise the commissioner on all  
23 matters related to wildland firefighting in the state. This includes,  
24 but is not limited to, developing recommendations regarding  
25 department capital budget requests related to wildland firefighting  
26 and developing strategies to enhance the safe and effective use of  
27 private and public wildland firefighting resources.

28       (2) The commissioner may appoint members to the wildland fire  
29 advisory committee as the commissioner determines is the most helpful  
30 in the discharge of the commissioner's duties. However, at a minimum,  
31 the commissioner must invite the following:

32       (a) Two county commissioners, one from east of the crest of the  
33 Cascade mountains and one from west of the crest of the Cascade  
34 mountains;

35       (b) Two owners of industrial land, one an owner of timberland and  
36 one an owner of rangeland;

37       (c) The state fire marshal or a representative of the state fire  
38 marshal's office;

1 (d) Two individuals with the title of fire chief, one from a  
2 community located east of the crest of the Cascade mountains and one  
3 from a community located west of the crest of the Cascade mountains;

4 (e) A representative of the federal government;

5 (f) A representative of a tribal nation;

6 (g) A representative of a statewide environmental organization;

7 (h) A representative of a state land trust beneficiary; and

8 (i) A small forest landowner.

9 (3) The local wildland fire liaison serves as the administrative  
10 chair for the wildland fire advisory committee.

11 (4) The department must provide staff support for all committee  
12 meetings.

13 (5) The wildland fire advisory committee must meet at the call of  
14 the administrative chair for any purpose that directly relates to the  
15 duties set forth in subsection (1) of this section or as is otherwise  
16 requested by the commissioner or the administrative chair.

17 (6) Each member of the wildland fire advisory committee serves  
18 without compensation but may be reimbursed for travel expenses as  
19 authorized in RCW 43.03.050 and 43.03.060.

20 (7) The members of the wildland fire advisory committee, or  
21 individuals acting on their behalf, are immune from civil liability  
22 for official acts performed in the course of their duties.

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

25 (1)(a) An individual may, consistent with this section, enter  
26 privately owned or publicly owned land for the purposes of attempting  
27 to extinguish or control a wildland fire, regardless of whether the  
28 individual owns the land, when fighting the wildland fire in that  
29 particular time and location can be reasonably considered a public  
30 necessity due to an imminent danger.

31 (b) No civil or criminal liability may be imposed by any court  
32 for any direct or proximate adverse impacts resulting from an  
33 individual's access to land for the purposes of attempting to  
34 extinguish or control a wildland fire when fighting the wildland fire  
35 in that particular time and location can be reasonably considered a  
36 public necessity, except upon proof of gross negligence or willful or  
37 wanton misconduct by the individual.

38 (c) An individual may enter land under this subsection (1) only  
39 if:

1 (i) There is an active fire on or in near proximity to the land;  
2 (ii) The individual has a reasonable belief that the local fire  
3 conditions are creating an emergency situation and that there is an  
4 imminent danger of a fire growing or spreading to or from the parcel  
5 of the land being entered;  
6 (iii) The individual has a reasonable belief that preventive  
7 measures will extinguish or control the wildfire;  
8 (iv) The individual has a reasonable belief that he or she is  
9 capable of taking preventive measures;  
10 (v) The individual only undertakes measures that are reasonable  
11 and necessary until professional wildfire suppression personnel  
12 arrives;  
13 (vi) The individual does not continue to take suppression actions  
14 after specific direction to cease from the landowner;  
15 (vii) The individual takes preventive measures only for the  
16 period of time until efforts to control the wildfire have been  
17 assumed by professional wildfire suppression personnel, unless  
18 explicitly authorized by professional wildfire suppression personnel  
19 to remain engaged in suppressing the fire;  
20 (viii) The individual follows the instructions of professional  
21 wildfire fighting personnel, including ceasing to engage in  
22 firefighting activities, when directed to do so by professional fire  
23 suppression personnel; and  
24 (ix) The individual promptly notifies emergency personnel and the  
25 landowner, lessee, or occupant prior to entering the land or within a  
26 reasonable time after the individual attempts to extinguish or  
27 control the wildland fire.  
28 (d) Nothing in this section authorizes any person to materially  
29 benefit from accessing land or retain any valuable materials that may  
30 be collected or harvested during the time the individual attempts to  
31 extinguish or control the wildland fire.  
32 (e)(i) The authority to enter privately owned or publicly owned  
33 land under this subsection (1) is limited to the minimum necessary  
34 activities reasonably required to extinguish or control the wildland  
35 fire.  
36 (ii) Activities that may be reasonable under this subsection (1)  
37 include: Using hand tools to clear the ground of debris, operating  
38 readily available water hoses, clearing flammable materials from the  
39 vicinity of structures, unlocking or opening gates to assist  
40 firefighter access, and safely scouting and reporting fire behavior.

1 (iii) Activities that do not fall within the scope of this  
2 subsection (1)(e), due to the high potential for adverse  
3 consequences, include, but are not limited to: Lighting a fire in an  
4 attempt to stop the spread of another fire; using explosives or  
5 falling timber as a firefighting technique; cutting fire lines with  
6 heavy earthmoving equipment; using aircraft for fire suppression; and  
7 directing other individuals to engage in firefighting.

8 (f) Nothing in this subsection (1) confers a legal or civil duty  
9 or obligation on a person to attempt to extinguish or control a  
10 wildfire.

11 (2)(a) No civil or criminal liability may be imposed by any court  
12 on the owner, lessee, or occupant of any land accessed as permitted  
13 under subsection (1) of this section for any direct or proximate  
14 adverse impacts resulting from the access to privately owned or  
15 publicly owned land allowed under subsection (1) of this section,  
16 except upon proof of gross negligence or willful or wanton misconduct  
17 by the owner, lessee, or occupant. The barriers to civil and criminal  
18 liability imposed by this subsection include, but are not limited to,  
19 impacts on:

20 (i) The individual accessing the privately owned or publicly  
21 owned land and the individual's personal property, including loss of  
22 life;

23 (ii) Any structures or land alterations constructed by  
24 individuals entering the privately owned or publicly owned land;

25 (iii) Other landholdings; and

26 (iv) Overall environmental resources.

27 (b) This subsection (2) does not apply in any case where  
28 liability for damages is provided under RCW 4.24.040.

29 (3) Nothing in this section limits or otherwise effects any other  
30 statutory or common law provisions relating to land access or the  
31 control of a conflagration.

32 **Sec. 5.** RCW 76.04.015 and 2012 c 38 s 1 are each amended to read  
33 as follows:

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

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

1 (3) The department shall:

2 (a) Enforce all laws within this chapter;

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

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

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

34 (iii) Absent a court order authorizing otherwise, the department  
35 may not take possession or control of evidence over the objection of  
36 an electric utility when the evidence is not owned by the utility but  
37 has caused damage to property owned by the utility. However, this  
38 subsection (3)(c)(iii) does not apply if the department has notified  
39 the utility of its intent to take possession or control of the

1 evidence and provided the utility with reasonable time to examine,  
2 document, and photograph the evidence.

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

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

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

11 (f) Maximize the effective utilization of local fire suppression  
12 assets consistent with section 6 of this act; and

13 (g) Regulate and control the official actions of its employees,  
14 the wardens, and the rangers.

15 (4) The department may:

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

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

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

26 (d) Inquire into:

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

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

31 (e) Provide fire detection, prevention, presuppression, or  
32 suppression services on nonforested public lands managed by the  
33 department or another state agency, but only to the extent that  
34 providing these services does not interfere with or detract from the  
35 obligations set forth in subsection (3) of this section. If the  
36 department provides fire detection, prevention, presuppression, or  
37 suppression services on nonforested public lands managed by another  
38 state agency, the department must be fully reimbursed for the work  
39 through a cooperative agreement as provided for in RCW 76.04.135(1).

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

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

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.04  
19 RCW to read as follows:

20 (1) To maximize the effective utilization of local fire  
21 suppression assets, the department is required to:

22 (a) Compile and annually update a master list of qualified fire  
23 suppression contractors and make the list available to county  
24 legislative authorities, emergency management departments, and local  
25 fire districts;

26 (b) Cooperate with federal wildland firefighting agencies to  
27 maximize, based on predicted need, the efficient use of local  
28 resources in close proximity to wildland fire incidents;

29 (c) Enter into preemptive agreements with landowners in  
30 possession of firefighting capability that may be utilized in  
31 wildland fire suppression efforts, including the use of bulldozers,  
32 fallers, fuel tenders, potable water tenders, water sprayers, wash  
33 trailers, refrigeration units, and buses; and

34 (d) Conduct outreach to provide basic incident command system and  
35 wildland fire safety training to landowners in possession of  
36 firefighting capability to help ensure that any wildland fire  
37 suppression actions taken by private landowners on their own land are  
38 accomplished safely and in coordination with any related incident  
39 command structure.

1 (2) When entering into preemptive agreements with landowners  
2 under this section, the department must ensure that:

3 (a) All equipment and personnel satisfy department standards; and

4 (b) All contractors are, when engaged in fire suppression  
5 activities, under the supervision of recognized wildland fire  
6 personnel.

7 (3) No civil liability may be imposed by any court of the state  
8 or its officers and employees for any adverse impacts resulting from  
9 training provided by the department or preemptive agreements entered  
10 into by the department under the provisions of this section except  
11 upon proof of gross negligence or willful or wanton misconduct.

12 **Sec. 7.** RCW 76.04.005 and 2014 c 90 s 1 are each reenacted and  
13 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (15) "Participating landowner" means an owner of forest land  
2 whose land is subject to the forest protection assessment under RCW  
3 76.04.610.

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

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

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

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

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

23 (21) "Commissioner" means the commissioner of public lands.

24 (22) "Local wildland fire liaison" means the person appointed by  
25 the commissioner to serve as the local wildland fire liaison as  
26 provided in section 1 of this act.

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