H-4379.2

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**SUBSTITUTE HOUSE BILL 2562**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Dent, Blake, Dye, Doglio, Johnson, and Peterson)

AN ACT Relating to rangeland fire protection associations; amending RCW 43.30.111, 43.30.215, 43.43.960, 52.12.160, 76.04.015, 76.04.135, and 76.04.181; reenacting and amending RCW 43.43.960; adding a new section to chapter 43.30 RCW; adding a new chapter to Title 24 RCW; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that ranchers, farmers, rural property owners, and others who live and work in the rural areas of our state that are most susceptible to the threat of wildfire are uniquely situated, by virtue of their knowledge of the land and proximity to wildfires, to provide critical initial attack firefighting capabilities. Rangeland fire protection associations offer a coordinated approach to wildland fire suppression, by taking advantage of the quick initial attack capabilities of those already out on the land, addressing the desire of those living and working in wildland areas to be active participants in protecting the places where they live and work, ensuring that all those engaged in the wildland firefighting effort have the necessary training, equipment, and communications, and supporting the state's efforts to provide a complete, coordinated approach to wildland fire prevention, detection, and suppression. The purpose of rangeland fire protection associations is to augment, not supplant or displace, existing wildland firefighting operational structures and jurisdictions. In circumstances where the geographic range of a rangeland fire protection association overlaps with the jurisdiction of a fire protection service agency, or of a fire protection jurisdiction, with responsibility for fire suppression on the land, the fire protection service agency, or fire protection jurisdiction, as appropriate, remains the lead fire protection entity for that land.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Member" means an individual who has been appointed by a rangeland fire protection association to perform fire detection, prevention, and suppression services.

(2) "Rangeland fire protection association" means a nonprofit association or unincorporated association that is formed for any lawful purpose that includes the detection, prevention, and suppression of wildfires outside the jurisdiction of a local, regional, or state fire protection agency.

NEW SECTION. **Sec.**  (1) Persons engaged in the detection, prevention, and suppression of wildfires outside of the boundaries of a local, regional, or state fire protection agency may act together for mutual benefit of the members and their communities in nonprofit associations or unincorporated associations. Such an association shall include in its name "rangeland fire protection association." Such an association is authorized to enter into agreements with local, regional, state, or federal governmental agencies for the detection, prevention, or suppression of wildfires.

(2) The rangeland fire protection association shall identify the physical boundaries within which it will provide detection, prevention, and suppression of wildfire services and resources. The rangeland fire protection association may notify the department of natural resources of the association's boundaries to facilitate cooperation with the department pursuant to section 7(1) of this act.

(3) The rangeland fire protection association must have liability insurance.

(4) The provisions of this chapter do not require a person or a person's agent to be a member of a rangeland fire protection association in order to suppress a fire occurring on the person's property or fires that pose a threat to the person's property.

NEW SECTION. **Sec.**  (1) Rangeland fire protection association members must:

(a) Be at least eighteen years of age;

(b) During all fire suppression activities, use and maintain personal protective equipment that meets published standards of the Washington state department of natural resources or United States bureau of land management as appropriate during wildfire suppression activities; and

(c) Have achieved a basic level of wildland fire training. The recommended training for a rangeland fire protection association member is training that achieves the level of wildland firefighter 2, as specified in the published standards of the national wildfire coordinating group.

(2) The provisions of RCW 76.04.770 apply to members of a rangeland fire protection association.

**Sec.**  RCW 43.30.111 and 2017 c 104 s 2 are each amended to read as follows:

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

(2) The role of the local wildland fire liaison is to:

(a) Provide advice to the commissioner on issues such as access to land during fire suppression activities, the availability of local fire suppression assets, environmental concerns, and landowner interests; ((~~and~~))

(b) Provide information to a rangeland fire protection association concerning the department's wildfire detection, prevention, and suppression activities taking place within the boundaries of the rangeland fire protection association;

(c) Cooperate with any rangeland fire protection association operating within the department's jurisdiction concerning the department's wildfire detection, prevention, and suppression activities either consistent with any written agreement the department may have with the rangeland fire protection association or in a manner that the department will use rangeland fire protection association members and resources to facilitate efforts of wildfire suppression as practicable to the situation; and

(d) Fulfill other duties as assigned by the commissioner or the legislature, including the recruitment of local wildland fire suppression contractors as provided in RCW 76.04.181.

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

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

**Sec.**  RCW 43.30.215 and 2011 c 355 s 1 are each amended to read as follows:

The board shall:

(1) Perform duties relating to appraisal, appeal, approval, and hearing functions as provided by law;

(2) Establish policies to ensure that the acquisition, management, and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto;

(3) Constitute the board of appraisers provided for in Article 16, section 2 of the state Constitution;

(4) Constitute the commission on harbor lines provided for in Article 15, section 1 of the state Constitution as amended;

(5) Constitute the board on geographic names as provided for in RCW 43.30.291 through 43.30.295; and

(6) Adopt and enforce rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter. However, the board may not adopt or enforce rules regulating rangeland fire protection associations governed by Title 24 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 43.30 RCW to read as follows:

(1) The department shall provide information to a rangeland fire protection association concerning the department's wildfire detection, prevention, and suppression activities taking place within the boundaries of the rangeland fire protection association if the rangeland fire protection association has notified the department of its boundaries. In addition, the department shall cooperate with any rangeland fire protection association operating within the department's jurisdiction concerning the department's wildfire detection, prevention, and suppression activities either consistent with any written agreement the department may have with the rangeland fire protection association, as described in subsection (2) of this section, or in a manner that the department will use rangeland fire protection association members and resources to facilitate efforts of wildfire suppression as practicable to the situation.

(2)(a) The department may enter into agreements for the detection, prevention, or suppression of fires with a rangeland fire protection association established under Title 24 RCW.

(b) The department may negotiate the form and content of the agreement, and may determine the safety, administrative, and training requirements that must be met in order for the rangeland fire protection association to enter into an agreement.

(3) The department shall assist, to the extent practicable, any rangeland fire protection association with which it has signed an agreement in procuring: Funding or equipment for the association to carry out the duties of the association; training for the members of the association; and personal protective equipment for the members of the association.

(4) The department may develop and publish recommendations concerning the formation, operations, and training of members of a rangeland fire protection association established under Title 24 RCW.

(5) The department must allow some members of rangeland fire protection associations to attend the department's wildfire training academies.

**Sec.**  RCW 43.43.960 and 2015 c 181 s 2 are each reenacted and amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "All risk resources" means those resources regularly provided by fire departments, fire districts, and regional fire protection service authorities required to respond to natural or man-made incidents, including but not limited to:

(a) Wild land fires;

(b) Landslides;

(c) Earthquakes;

(d) Floods; and

(e) Contagious diseases.

(2) "Chief" means the chief of the Washington state patrol.

(3) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(4) "Jurisdiction" means state, county, city, fire district, regional fire protection service authority, or port district units, or other units covered by this chapter.

(5) "Mobilization" means that all risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. Mobilization may include rangeland fire protection associations. During a large scale emergency, mobilization includes the redistribution of regional or statewide risk resources to either direct emergency incident assignments or to assignment in communities where resources are needed. Fire department resources may not be mobilized to assist law enforcement with police activities during a civil protest or demonstration, however, fire departments, fire districts, and regional fire protection service authorities are not restricted from providing medical care or aid and firefighting when mobilized for any purpose. Rangeland fire protection associations are limited to providing services and resources within the association's boundaries.

When mobilization is declared and authorized as provided in this chapter, all risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter from the time of the mobilization declaration.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(6) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW.

(7) "State fire marshal" means the director of fire protection in the Washington state patrol.

**Sec.**  RCW 43.43.960 and 2003 c 405 s 1 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Chief" means the chief of the Washington state patrol.

(2) "State fire marshal" means the director of fire protection in the Washington state patrol.

(3) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(4) "Jurisdiction" means state, county, city, fire district, or port district firefighting units, or other units covered by this chapter.

(5) "Mobilization" means that firefighting resources beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. Mobilization may include rangeland fire protection associations. During a large scale emergency, mobilization includes the redistribution of regional or statewide firefighting resources to either direct emergency incident assignments or to assignment in communities where firefighting resources are needed.

When mobilization is declared and authorized as provided in this chapter, all firefighting resources including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing firefighting resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter from the time of the mobilization declaration. Rangeland fire protection associations are limited to providing services and resources within each association's boundaries.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(6) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW.

**Sec.**  RCW 52.12.160 and 2012 c 14 s 1 are each amended to read as follows:

(1) The definitions in this section apply throughout this section and RCW 4.24.780 unless the context clearly requires otherwise.

(a) "Fire protection service agency" or "agency" means any local, state, or federal governmental entity responsible for the provision of firefighting services, including fire protection districts, regional fire protection service authorities, cities, towns, port districts, the department of natural resources, and federal reservations.

(b) "Fire protection jurisdiction" means an area or property located within a fire protection district, a regional fire protection service authority, a city, a town, a port district, lands protected by the department of natural resources under chapter 76.04 RCW, or on federal lands.

(c) "Firefighting services" means the provision of fire prevention services, fire suppression services, emergency medical services, and other services related to the protection of life and property.

(d) "Improved property" means property upon which a structure is located, including bridges and agricultural structures as defined in RCW 19.27.015.

(e) "Property" means land, structures, or land and structures.

(f) "Unimproved property" has the same meaning as "unimproved lands" in RCW 76.04.005.

(g) "Unprotected land" means improved property located outside a fire protection jurisdiction.

(2)(a) In order to facilitate the provision of firefighting services to unprotected lands, property owners of unprotected lands are encouraged, to the extent practicable, to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection service agency or agencies for the provision of firefighting services. Any written contractual agreement between a property owner and a fire protection service agency must include, at minimum, a risk assessment of the property as well as a capabilities assessment for the district.

(b) Property owners of unprotected land who choose not to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection agency or agencies for the provision of firefighting services, do so willingly and with full knowledge that a fire protection service agency is not obligated to provide firefighting services to unprotected land.

(3) In the absence of a written contractual agreement, a fire protection service agency may initiate firefighting services on unprotected land outside its fire protection jurisdiction in the following instances: (a) Service was specifically requested by a landowner or other fire service protection agency; (b) service could reasonably be believed to prevent the spread of a fire onto lands protected by the agency; or (c) service could reasonably be believed to substantially mitigate the risk of harm to life or property by preventing the spread of a fire onto other unprotected lands.

(4)(a) The property owner or owners shall reimburse an agency initiating firefighting services on unprotected land outside its fire protection jurisdiction for actual costs that are incurred that are proportionate to the fire itself. Cost recovery is based upon the Washington fire chiefs standardized fire service fee schedule.

(b) If a property owner fails to pay or defaults in payment to an agency for services rendered, the agency is entitled to pursue payment through the collections process outlined in RCW 19.16.500 or through initiation of court action.

(5)(a) The fire protection service agency or fire protection jurisdiction, as appropriate, shall provide information to a rangeland fire protection association concerning the fire protection service agency's or fire protection jurisdiction's wildfire detection, prevention, and suppression activities taking place within the boundaries of the rangeland fire protection association if the rangeland fire protection association has notified the fire protection service agency or fire protection jurisdiction of its boundaries. In addition, the fire protection service agency or fire protection jurisdiction, as appropriate, shall cooperate with any rangeland fire protection association operating within the fire protection service agency's or fire protection jurisdiction's jurisdiction concerning the fire protection service agency's or fire protection jurisdiction's wildfire detection, prevention, and suppression activities either consistent with any written agreement the fire protection service agency or fire protection jurisdiction may have with the rangeland fire protection association, as described in (b) of this subsection, or in a manner that the fire protection service agency or fire protection jurisdiction will use rangeland fire protection association members and resources to facilitate efforts of wildfire suppression as practicable to the situation.

(b) A fire protection service agency or fire protection jurisdiction may enter into agreements for the detection, prevention, or suppression of fires with a rangeland fire protection association established under Title 24 RCW. The fire protection service agency or fire protection jurisdiction may negotiate the form and content of the agreement, and may determine the safety, administrative, and training requirements that must be met in order for the rangeland fire protection association to enter into an agreement. Agreements may also include assistance with procuring equipment and training.

**Sec.**  RCW 76.04.015 and 2016 c 109 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, consistent with RCW 76.04.021, 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;

(f) Maximize the effective utilization of local fire suppression assets consistent with RCW 76.04.181; and

(g) 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 timberlands within the state;

(ii) The extent to which timberlands 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, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, rangeland fire protection association, or Indian tribe within the state of Washington in forest firefighting and patrol.

**Sec.**  RCW 76.04.135 and 2017 c 280 s 2 are each amended to read as follows:

(1) For the purpose of promoting and facilitating cooperation among fire protection agencies, including the department, and between the department and other agencies that manage lands owned by the state, and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, ((~~or~~)) federal agency, or rangeland fire protection association to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect or manage.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands.

(4) The department may transfer ownership of depreciated firefighting vehicles and related equipment upon terms subject to mutual agreement to local fire districts in wildfire prone areas in all areas of the state, as determined by the department, and where the median household income is below the state average. These vehicle and equipment transfers are exempt from the requirements in RCW 43.19.1919(1). The department must notify the chairs and ranking members of the legislative committees with jurisdiction regarding these transfers at least ten days prior to transfer of the equipment.

**Sec.**  RCW 76.04.181 and 2017 c 104 s 1 are each amended to read as follows:

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

(a) Actively engage in ongoing prefire season outreach and recruitment of qualified wildland fire suppression contractors and equipment owners who have valid incident qualifications for the type of contracted work to be performed and compile and annually update a master list of the qualified contractors. In order to be included on a master list of qualified wildland fire suppression contractors:

(i) Contractors providing fire engines, tenders, crews, or similar resources must have training and qualifications sufficient for federal wildland fire contractor eligibility, including possessing a valid incident qualification card, commonly called a red card; and

(ii) Contractors other than those identified in (a)(i) of this subsection must have training and qualifications evidenced by possession of a valid department qualification and safety document, commonly called a blue card, issued to people cooperating with the department pursuant to an agreement;

(b) Provide timely advance notification of the dates and locations of department blue card training to all potential wildland fire suppression contractors and rangeland fire protection associations known to the department and make the training available in several locations that are reasonably convenient for contractors and rangeland fire protection association members;

(c) Organize the lists of qualified wildland fire suppression contractors to identify the counties where the contractors are located and make the lists, and the availability status of the contractors on the list, available to emergency dispatchers, county legislative authorities, emergency management departments, and local fire districts;

(d) Cooperate with federal wildland firefighting agencies to prioritize, based on predicted need, the efficient use of local resources in close proximity to wildland fire incidents, including local private wildland suppression contractors;

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

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

(2) The local wildland fire liaison may play an active role in the outreach and recruitment of wildland fire suppression contractors under subsection (1) of this section. This effort may include, but is not limited to, reaching out to local fire districts and collecting their knowledge to identify potential fire suppression contractors.

(3) Nothing in subsection (1) of this section prohibits the department from:

(a) Engaging, as needed, local private wildland fire suppression contractors not included on the master list or subject to a preemptive agreement; or

(b) Conducting safety training on the site of a wildland fire in order to utilize available contractors not included on a master list of qualified wildland fire suppression contractors.

(4) When entering into preemptive agreements with landowners and other contractors under this section, the department must:

(a) Ensure that all equipment and personnel satisfy department standards, including any applicable safety training certifications required by the department of labor and industries;

(b) Ensure that all contractors are, when engaged in fire suppression activities, under the supervision of recognized wildland fire personnel;

(c) Verify that the agreements have been finalized with an agreed upon standard operating rate identified before being included on the master list of qualified contractors; and

(d) Inspect, or verify the inspection of, any equipment included in the agreement to ensure that all safety and dependability standards are satisfied.

(5) The department may authorize operational field personnel to carry additional personal protection equipment in order to loan the equipment to private fire suppression contractors as needed.

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

((~~(5) [(7)]~~)) (7) The provisions of this section may be applied in the department's agreements with rangeland fire protection associations established in Title 24 RCW.

(8) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 24 RCW.

NEW SECTION. **Sec.**  Section 8 of this act expires July 1, 2019.

NEW SECTION. **Sec.**  Section 9 of this act takes effect July 1, 2019.

**--- END ---**