

SENATE BILL REPORT

SHB 1205

AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES,
FEBRUARY 27, 1992

Brief Description: Clarifying forest fire fighting duties.

SPONSORS: House Committee on Natural Resources & Parks (originally sponsored by Representatives Belcher, Beck, Scott, Broback, Hargrove, H. Sommers, Bowman, Silver, H. Myers, R. Meyers, Winsley, Edmondson, Wynne and Basich; by request of Department of Natural Resources).

HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: Do pass as amended.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Conner, Owen, Snyder, Sumner, and Sutherland.

Minority Report: Do not pass as amended.

Signed by Senator Barr.

Staff: Vic Moon (786-7469)

Hearing Dates: February 26, 1992; February 27, 1992

BACKGROUND:

The Department of Natural Resources (DNR) has identified three problems in the forest protection statutes as they relate to forest fires. They involve: (1) the department's fire suppression responsibilities to the public in general; (2) the recovery of fire suppression costs by federal agencies; and (3) the possession of evidence in fire investigations.

A recent State Supreme Court decision held the department liable for property damage caused by the Barker Mountain fire which started on department lands. The court rejected the department's argument that the department had only a public duty and not a duty to individual landowners.

Statutes require landowners to provide adequate protection against the spread of fire on their lands. If landowners fail or neglect to provide adequate fire protection, the department is required to provide that protection and is authorized to charge a fire protection assessment to the landowner. The payment of fire assessments was an important factor in the court's decision that the department was liable to individual landowners. This decision will make the department vulnerable to future negligence law suits when the department is acting in its fire fighting and suppression capacity.

The department may recover costs when a fire is caused through negligence, or when a fire is spread because an extreme fire hazard is created or if forest debris is allowed to build up. The state, a municipality or a forest protective association are the only entities currently allowed to recover costs. The department has had difficulty recovering for costs incurred by federal agencies who assist in suppression of fires.

The department is responsible for investigating the origin and cause of all forest fires but, unlike local governments, does not have statutory authority to take possession of evidence. This has affected the department's legally mandated requirement to prove responsibility.

SUMMARY:

A public duty doctrine is established for the Department of Natural Resources when the department is acting in its fire fighting and suppression capacity. This duty is owed to the public in general and not to any individual or class of persons separate from the general public. Payment of forest protection and fire suppression assessments will not create a special department duty toward those who pay the assessments.

Costs incurred by a federal fire fighting agency are recoverable to the same extent as those incurred by the department.

Fire investigators are authorized to seize relevant evidence found in plain view. If the owner objects, the department must obtain a court order within 14 days for continued possession of the evidence.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENTS:

The meaning of confiscated property is clarified to refer directly to the evidence seized by the department.

TESTIMONY FOR:

The bill is needed to limit potential lawsuits, and guarantee the ability to collect costs.

TESTIMONY AGAINST: None

TESTIFIED: Karl Dennison, Forest Service; Stan Biles, Dept. of Natural Resources; Gary Alexander, Dept. of General Administration