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**SUBSTITUTE SENATE BILL 5025**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Natural Resources (originally sponsored by Senator Owen)

Read first time 02/05/93.

1 AN ACT Relating to forest fires; amending RCW 76.04.495 and  
2 76.04.015; and adding a new section to chapter 76.04 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.04 RCW  
5 to read as follows:

6 The department when acting, in good faith, in its statutory  
7 capacity as a fire prevention and suppression agency, is carrying out  
8 duties owed to the public in general and not to any individual person  
9 or class of persons separate and apart from the public. Nothing  
10 contained in this title, including but not limited to any provision  
11 dealing with payment or collection of forest protection or fire  
12 suppression assessments, may be construed to evidence a legislative  
13 intent that the duty to prevent and suppress forest fires is owed to  
14 any individual person or class of persons separate and apart from the  
15 public in general. This section does not alter the department's duties  
16 and responsibilities as a landowner.

17 **Sec. 2.** RCW 76.04.495 and 1986 c 100 s 33 are each amended to read  
18 as follows:

1 (1) Any person, firm, or corporation: (a) Whose negligence is  
2 responsible for the starting or existence of a fire which spreads on  
3 forest land; or (b) who creates or allows an extreme fire hazard under  
4 RCW 76.04.660 to exist and which hazard contributes to the spread of a  
5 fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist  
6 and which debris contributes to the spread of fire, shall be liable for  
7 any reasonable expenses made necessary by (a), (b), or (c) of this  
8 subsection (~~(incurred by)~~). The state, a municipality, (~~or~~) a forest  
9 protective association, or any fire protection agency of the United  
10 States may recover such reasonable expenses in fighting the fire,  
11 together with costs of investigation and litigation including  
12 reasonable attorneys' fees and taxable court costs, if the expense was  
13 authorized or subsequently approved by the department. The authority  
14 granted under this subsection allowing the recovery of reasonable  
15 expenses incurred by fire protection agencies of the United States  
16 shall apply only to such expenses incurred after June 30, 1993.

17 (2) The department or agency incurring such expense shall have a  
18 lien for the same against any property of the person, firm, or  
19 corporation liable under subsection (1) of this section by filing a  
20 claim of lien naming the person, firm, or corporation, describing the  
21 property against which the lien is claimed, specifying the amount  
22 expended on the lands on which the fire fighting took place and the  
23 period during which the expenses were incurred, and signing the claim  
24 with post office address. No claim of lien is valid unless filed, with  
25 the county auditor of the county in which the property sought to be  
26 charged is located, within a period of ninety days after the expenses  
27 of the claimant are incurred. The lien may be foreclosed in the same  
28 manner as a mechanic's lien is foreclosed under the statutes of the  
29 state of Washington.

30 **Sec. 3.** RCW 76.04.015 and 1986 c 100 s 2 are each amended to read  
31 as follows:

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

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

38 (3) The department shall:

1 (a) Enforce all laws within this chapter;

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

4 (c) Investigate the origin and cause of all forest fires and work  
5 cooperatively to the extent possible with utilities, property owners,  
6 and other interested parties to identify and preserve evidence, to  
7 determine in every case whether either a criminal act or negligence by  
8 any person, firm, or corporation caused the starting or existence of  
9 the fire. In the course of investigations, the department shall have  
10 authority to take possession or control of relevant evidence found in  
11 plain view belonging to any person, firm, or corporation. To the  
12 extent possible the department shall notify the person, firm, or  
13 corporation. The person, firm, or corporation shall have an equal  
14 right to view the evidence and shall have adequate time to examine and  
15 photograph such evidence before the department takes possession of such  
16 evidence. If the person, firm, or corporation objects to the  
17 confiscation of evidence, the department must obtain, within fourteen  
18 days, a court order authorizing the continued possession;

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

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

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

25 The authority granted the department under this subsection shall  
26 not be construed to permit the department to: Prohibit or in any way  
27 interfere with the legal obligation of an electric utility to maintain  
28 or restore electric service; or order or undertake any action to cause  
29 a curtailment of electric service to any customer of an electric  
30 utility unless the department has obtained a court order to provide  
31 notice to the electric utility and preserve evidence. Such evidence  
32 shall be taken only by qualified personnel. In such instances, the  
33 department and the utility shall cooperate to gather, maintain, and  
34 preserve evidence.

35 (4) The department may:

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

38 (b) Adopt rules for the prevention, control, and suppression of  
39 forest fires as it considers necessary including but not limited to:

1 Fire equipment and materials; use of personnel; and fire prevention  
2 standards and operating conditions including a provision for reducing  
3 these conditions where justified by local factors such as location and  
4 weather;

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

7 (d) Inquire into:

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

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

12 (5) When the department considers it to be in the best interest of  
13 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 fire fighting and patrol.

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