

SENATE BILL REPORT

SB 6657

As Reported by Senate Committee On:
Ways & Means, March 3, 2016

Title: An act relating to wildfire management.

Brief Description: Relating to wildfire management.

Sponsors: Senators Parlette, Hargrove and Hobbs.

Brief History:

Committee Activity: Ways & Means: 3/02/16, 3/03/16 [DPS, w/oRec].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6657 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hewitt, Nelson, O'Ban, Padden, Parlette, Pedersen, Rolfes, Schoesler and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Sherry McNamara (786-7402)

Background: Wildland Fire Suppression. The Department of Natural Resources (DNR) is responsible for forest fire prevention and response on both state-owned and private forest land in Washington. Landowners and people engaged in activity on land who have knowledge of a wildland fire have a duty to make every reasonable effort to suppress the wildland fire regardless of the origin or spread of the wildland fire. If a wildland fire occurs in a land clearing, right-of-way clearing, or landowner operation, it must be fought to the full limit of available employees and equipment. If a person does not suppress a wildland fire, DNR must suppress it. DNR may coordinate with governmental agencies and tribes and contract with private corporations for the protection and development of the forest lands within the state.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

"Forest land" is defined as unimproved land with enough trees or flammable material to create a fire menace to life or property. Sagebrush and grass areas east of the Cascade mountains may be considered forest land if such lands are adjacent to, or intermingled with, tree growth. For protection purposes, forest land does not include structures.

Forest Fire Protection Liability. When DNR is acting in its fire prevention and suppression capacity, a duty is owed to the public in general and not to any individual or class of persons separate from the general public.

Air Quality Standards. The Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the United States Environmental Protection Agency (EPA) to administer aspects of the federal Clean Air Act (CAA) in Washington. Local clean air agencies have the primary responsibility for administering the state and federal CAAs in counties which have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal CAA programs. Under the federal CAA, each state maintains a State Implementation Plan (SIP) that describes how the state implements clean air programs to achieve the federal ambient air quality standards for air pollutants.

Under the federal CAA, the EPA sets National Ambient Air Quality Standards (NAAQS) for several pollutants including carbon monoxide and particulate matter. There are two types of NAAQS:

- Primary standards set limits to protect public health of sensitive populations such as children, the elderly, and those with conditions such as asthma.
- Secondary standards set limits to protect public welfare and address decreased visibility and damage to animals, crops, vegetation, and buildings.

Under the state CAA, Ecology sets Washington Ambient Air Quality Standards (WAAQS). Local air authorities may also adopt standards that apply within their jurisdiction which must be at least as protective as federal standards. Local standards and WAAQS are primary standards only.

Burning Permits. DNR, Ecology, and certain political subdivisions such as counties, conservation districts, fire protection authorities, and local air authorities, may issue permits for a variety of outdoor burning activities in their respective jurisdictions allowed under the state CAA. Outdoor burning includes agricultural burning, the burning of organic yard or gardening waste, and silvicultural burning. Outdoor burn permits may not be issued during a period of impaired air quality declared by Ecology or a local air authority.

DNR has direct charge and responsibility over all matters relating to forest fire services in the state. DNR is also responsible for issuing and regulating permits for certain burning activities on lands under the DNR's fire protection authority for the following purposes: to abate and prevent fire hazards; forest firefighting instruction; and burning operations to improve fire-dependent ecosystems and otherwise improve the forestlands of the state.

Smoke Management Plan. The Washington State smoke management plan (Plan) was first adopted in 1969, and was most recently updated in 1998, as an optional part of the SIP of the federal CAA. The Plan governs DNR-regulated silvicultural burning, which includes all

DNR fire protected lands; unimproved, federally managed forest lands; and participating tribal lands. The Plan does not pertain to agricultural burning or outdoor burning on improved property.

DNR is responsible for the overall administration of the Plan. Operating responsibilities are delegated to DNR region managers and other state and federal agencies for various activities. Ecology confers with DNR regarding air quality determinations as needed for burn decisions. Emissions from silvicultural burning conducted in Eastern Washington to restore forest health are exempt from mandatory emissions reduction levels.

Mechanical Treatments. Mechanical treatments are used to protect communities, resources, and fire-dependent ecosystems. Mechanical treatments are often used in areas in or directly surrounding communities as well as in combination with other types of treatments. There are two primary ways in which mechanical treatments are utilized in reducing the hazards posed by wildfire.

In forested areas, trees may be thinned to reduce density. The resulting fuels from thinning are often piled and burned using prescribed fire. Thinning activities may also provide an opportunity for biomass utilization of the material.

In forested and other areas, the lower tree limbs may be removed to reduce ladder fuel buildup. Ladder fuels, consisting of dense vegetation near the forest floor and extending up the tree, increase the likelihood of fire reaching the crowns of the trees. Crown fires are more intense and are harder for firefighters to suppress. In effort to reduce the potential of crown fires, ladder fuels may be mechanically treated. After mechanical treatments, the fuels may be treated with prescribed fire or undergo biomass utilization.

Prescribed Burning. Silvicultural or prescribed burning is governed by the state's smoke management plan. Prescribed burning is the controlled application of fire to wildland fuels under specific environmental conditions which allow the fire to be confined to a predetermined area, and at the same time to produce the fireline intensity and rate of spread required to attain planned management objectives. Prescribed burn project managers are often referred to as "burn bosses."

Wildland Urban Interface (WUI) Code. The WUI Code is a model code developed and published by the International Code Council, Inc. (ICC). The ICC is a nonprofit organization that develops and publishes model codes for building, construction, and design standards. Updates to the codes are developed and published on a three-year cycle.

The WUI Code establishes minimum regulations for land use and the built environment in designated wildland-urban interface areas for the stated purpose of mitigating wildfire hazard. The WUI Code applies to the construction, alteration, movement, repair, maintenance, and use of any building, structure, or premises within the "wildland-urban interface areas" of a jurisdiction. "Wildland-urban interface area" is defined as the geographical areas where structures and other human development meets or intermingles with wildland or vegetative fuels.

Three counties in Washington - Clark, Kittitas, and Yakima - have adopted the WUI Code.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): State Wildfire Insurance. The Department of Enterprise Services (DES), in coordination with DNR, must investigate wildfire insurance policy options for the state. Preference is given to policies with a \$50 million deductible or less but DES is free to request information at a variety of deductible levels. DES must report on its findings to the Legislature by November 30, 2016.

20-Year Forest Health and Wildfire Prevention Strategic Plan. By December 31, 2018, DNR must develop and implement a strategic plan to treat all areas of Washington forest land in poor forest condition and to manage resources for wildfire prevention and suppression in a more efficient and effective manner. In developing the plan, DNR must consult with relevant local, state and federal agencies, tribes, forest landowners, representatives from milling and log transportation industries, and other interested parties from the nonprofit and commercial sectors. The plan must, at minimum, address strategies to:

- implement an actionable plan to restore and maintain statewide forest health and resilience within 20 years;
- facilitate communication and coordination between local, regional, state, federal, and tribal fire personnel;
- improve public education and local outreach regarding fire prevention and suppression activities;
- streamline contract procedures to perform forest health treatments on public and private lands;
- expand technical assistance programs for local governmental entities and private landowners;
- address barriers to wildfire prevention and suppression activities, particularly in rural areas where resources may be limited;
- using best available science, manage riparian areas to create buffers against wildfire and protect water quality and aquatic species habitat from detrimental effects of wildfires;
- deploy efficient and effective initial attack response to prevent fire spread; and
- integrate statewide usage of upgraded fire modeling technology and remote wildfire detection technology, such as ground-based smoke sensors or manned aircraft for reconnaissance, to ensure deployment of appropriate fire resources.

DNR must report to the legislature on its progress by December 31, 2016, and December 31, 2017. DNR must update the plan every two years and report to the legislature on its progress in conjunction with its biennial budget request.

Smoke Management Plan. By December 31, 2018, DNR must update the smoke management plan, based on a science-based stakeholder process, as follows:

- identify communities most vulnerable to wildfire and prioritize prescribed burning and other appropriate resiliency treatments on lands surrounding those communities;
- raise the minimum threshold to be considered a large fire;
- provide longer range forecasts for permitted prescribed burns, including twenty-four hour and forty-eight hour forecasts;
- authorize individual prescribed burns twenty-four hours prior to ignition of the fire;

- allow DNR to authorize, by special burn permit, prescribed burning on days when DNR would otherwise deny burning if the denial would threaten imminent and substantial economic loss;
- clarify the criteria DNR considers when determining whether a burn "has the potential to affect communities" with respect to multiple day burns;
- increase utilization of multiple day burns and coordinate with prescribed burn managers with approved multiple day burn permits to ensure predictability and to maximize opportunities to burn on each day of the approved multiple day burn permit; and
- DNR may not deny a prescribed burn solely on the potential for smoke intrusions into communities unless the smoke intrusion is forecast to contribute significantly to either an exceedance of an air quality standard or to a significant threat to public health or safety.

DNR must adopt rules to implement the smoke management plan adopted under this section. DNR must report to the legislature on its progress by December 31, 2016, and December 31, 2017.

Burn Permit Authority. Amends a statute that states DNR shall encourage alternative silviculture practices "to reduce the need for burning" to state that DNR shall "encourage mechanical thinning and prescribed burning when appropriate for forest health improvement and fire prevention."

Burn Permit Revocation or Postponement. Amends a statute that allows DNR - or any warden or ranger - to refuse, revoke, or postpone the use of burn permits "when necessary in their judgment to prevent air pollution" to allow this only if "the particular burn at issue is forecast to contribute significantly to either an exceedance of an air quality standard . . . or to create a threat to public health or safety."

Burn Ban Authority. Defines "usual fire danger" - the condition under which DNR may impose a burn ban - as "adverse weather and fire fuel conditions, in combination with the prevalence of ignition sources, that indicate high potential over a large area for a fire to ignite, spread, and require suppression action."

Federal Land Management Cooperation. DNR must enter into discussions with the federal agencies managing land in the state with the objective of entering into or updating existing memoranda of understandings or contracts regarding forest health and wildfire management. In particular, DNR must address the following issues:

- cost and labor sharing agreements for forest health treatments conducted on federally-owned lands;
- timelines and measurable forest health improvement goals reachable within 10 years of the date of agreement;
- streamlining processes to share fire protection resources across jurisdictional lines; and
- improving interagency cooperation to facilitate rapid initial response to fire. For example, DNR may agree with a federal partner to share in attacking wildfires along common ownership boundaries and exchange assistance free of charge across agency jurisdictions during the first 24 hours of a fire.

DNR must report on its progress by December 31, 2016.

Joint Firefighting Training. Finds that joint training results in effective integration and deployment of assets, such as the National Guard, when fire severity levels are high. Requires the National Guard to maintain a dedicated workforce of trained firefighters to be deployed as needed during the fire season. The Legislature intends that not less than 600 national guard personnel be maintained with training and fire suppression personal protective equipment and that the legislature intends to provide appropriations to maintain this level of readiness.

Coordinated Command for Large Fires. DNR must ensure that adequately trained fire commanders are available to dispatch resources where they are needed most. To foster efficient year-round workforce management, DNR must, whenever practical, train existing DNR or local fire district personnel to fill such additional fire commander positions during the fire season.

Aerial Attack. DNR must enter into 90-day exclusive contracts for fixed-wing single air tankers for wildland fire suppression and ensure sufficient fire aviation personnel, including operations managers and dispatchers, are available to coordinate and deploy aviation assets where they are most needed.

Multilingual Prescribed Burn Notices. Encourages DNR to notify the public in the vicinity of a prescribed burn conducted by DNR of the general location, approximate time of ignition, and expected duration of the burn. DNR may notify the public through written and verbal notices, press releases to local media, and social media. DNR is further encouraged to give such notifications in a language that diverse residents can understand when a significant segment of the community speaks a language other than English and has limited proficiency in English.

Encourages state agencies required to provide public notices advising or informing communities about public health, safety, and welfare risks to provide those notices in a language that diverse residents can understand when a significant segment of the community speaks a language other than English and has limited proficiency in English.

During emergencies, emergency management departments are encouraged to provide written and verbal notices including, but not limited to, evacuation notices and shelter information, in languages represented by their communities who speak a language other than English.

Emergency management departments are also encouraged to air public service announcements by radio or television broadcast in the languages represented by their communities who speak a language other than English.

Accounting for 2016 Forest Health and Fire Management-Related Appropriations. By December 31, 2016, DNR must report to the legislature on how funds appropriated in the 2016 supplemental operating budget for use related to forest health and wildfire management were expended or are expected to be expended in 2017.

Local Fire Equipment. DNR must determine where fire resources are needed and which local fire districts would most benefit from those additional resources. Fire resources may include, but are not limited to, fire engines, safety equipment, chainsaws, and radios. DNR must, at minimum, consider the following factors:

- Geographic location, including whether the local fire district is located in a fire-prone area; and
- Particular resource needs identified either by the department of natural resources or by the local fire district, based on a ten-year history of fire activity in or near the local fire district's jurisdiction.

DNR is required to identify fire-prone areas in the state that are not presently contributing or benefiting from any wildland fire protection jurisdiction and report to the legislators and county commissioners on the location of these fire-prone areas, recommendations to extend services to those areas, and consequences in terms of wildland fire management and suppression costs for failure to include these areas in a fire protection jurisdiction.

Fire Suppression Volunteers. DNR must provide all necessary personal protection gear at no cost to every fire suppression volunteer or offer to reimburse any volunteer who purchases new equipment suitable for the kind of volunteer work to be performed. If the volunteer accepts reimbursement, he or she must surrender the equipment for which he or she was reimbursed when the volunteer period comes to an end. DNR must store personal protection gear in a geographic area and manner for quick distribution to volunteers when needed for fire suppression.

Local Wildland Fire Severity Program. A new local wildland fire severity account is created, funded according to DNR's biennial budget request reflecting demand, to fund the release of prepositioned fire suppression resources to local suppression entities when a severity condition is declared for the area of request. Severity conditions are conditions in a region that indicate a high level of wildfire risk. Local suppression entities must have entered into agreements with DNR and other applicable suppression entities to ensure well-planned prepositioning of assets. Costs are initially borne by DNR's wildfire suppression appropriation. DNR may reimburse itself from the severity account for costs incurred fulfilling requests.

By October 31, 2018, DNR must report to the legislature on the demand on the severity account and estimated funding levels to match demand.

For the severity program, "prepositioned fire suppression resources" means fire suppression-related resources either geographically positioned or contracted for prior to and in anticipation of wildland fire suppression activity during a fire season. Prepositioned fire suppression resources must meet department standards and requirements, and may include, but are not limited to, wildfire engines, heavy equipment, helicopters, single-engine air tankers, and personnel, such as hand crews, operators, pilots, and supervisors.

Survey to Identify Resiliency Treatments Near Vulnerable Communities. By December 31, 2016, DNR must report on necessary resiliency treatments on lands surrounding communities most vulnerable to wildfire, including timelines and resources required to conduct those treatments.

Prescribed Burn Manager Certification Program. DNR must create a non-mandatory certification for prescribed burn managers. Certified prescribed burn managers are granted additional liability protection for permitted burns. DNR may set renewal criteria, add a decertification process for rule violators, and create an equivalency test for experienced burn bosses.

Protecting Structures From Wildfire. By July 1, 2016, DNR must create and distribute educational material regarding foams, gels, and other products designed to protect structures from encroaching wildfires by direct mailer to homeowners in communities located in fire-prone areas of the state. DNR must also create and maintain a web page on its web site regarding the availability, benefits, and other information about foams, gels, and other products designed to protect structures from encroaching wildfires.

DNR must expand its programs to provide wildfire prevention education, community outreach programs, and technical assistance to landowners. DNR must also ensure landowner compliance with grant and contract requirements with respect to forest health, resiliency, or fuels reduction treatments, burn permit conditions, and industrial fire precaution levels.

"Forest Resiliency Burning" Pilot Project. DNR must create a forest resiliency burning pilot project on fire-prone land in coordination with the Northeast Washington forest collaborative, the North Central Washington forest health collaborative, the Tapash sustainable forest collaborative, and at least one organized group of public agencies and interested stakeholders whose purpose is to protect, conserve, and expand the safe and responsible use of prescribed fire on the Washington landscape.

"Forest resiliency burning" is defined as permitted burning activity to maintain ecosystems, mitigate wildfire potential, decrease forest insect or disease susceptibility, or otherwise enhance resiliency to fire.

DNR must approve single day or multiple day burns if the burning is unlikely to significantly contribute to an exceedance of air quality standards. DNR must approve burn 24-hours prior to ignition. Once underway, multiple-day burns may only be denied or postponed if necessary for the safety of adjacent property or if DNR or Ecology determines the burn has significantly contributed to an air quality violation.

DNR is not required to update the smoke management plan or the SIP in order to conduct the pilot project. However, DNR may use data collected during the pilot project to inform its update of the smoke management plan.

DNR must report to the Legislature by December 1, 2017, with the following information:

- the amount of forest resiliency burns proposed, approved, and conducted;
- air pollution levels in areas where forest resiliency burns have been approved, both before and after the burn;
- the quantity and severity of air quality exceedances by pollutant type;
- a comparative analysis between the predicted smoke conditions and the actual smoke conditions observed on location; and

- recommendations relating to continuing or expanding forest resiliency burning and creating forest resiliency burning as a new type of outdoor burning permitted by the DNR.

Several sections are subject to the availability of amounts appropriated for the specific purpose of that section.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute):

- Defines "prepositioned fire suppression resources" for the severity program to mean fire suppression-related resources either geographically positioned or contracted for prior to and in anticipation of wildland fire suppression activity during a fire season.
- Requires that prepositioned fire suppression resources meet department standards and requirements.
- Encourages state agencies that are required to provide public notices about health, safety and welfare risks to provide the notices in a language that diverse residents can understand.
- Encourages emergency management departments to provide written and verbal notices, such as evacuation notices and shelter information, and public service announcements in languages represented by their communities.
- Removes the provision requiring DNR to report options to the Legislature on incentives for adoption of the WUI Code.
- Requires DNR to identify fire-prone areas that are not presently contributing to or benefiting from any wildland fire protection jurisdiction and report to the legislature and county commissioners by December 31, 2016 on the location of these areas, recommendations to extend services to the areas, and consequences in terms of wildland fire management and suppression costs for failure to include these fire-prone areas in a fire protection jurisdiction.
- States legislative intent to train, maintain, and provide fire suppression personal protective equipment to at least 600 national guard personnel and to provide appropriations to maintain this level of readiness.
- Allows a firefighter or reserve officer who is enrolled in the Volunteer Fire Fighters' and Reserve Officers' Relief and Pension System that is mobilized to fight state wildfires or to participate in other multiregional emergencies, to elect to have the service earned count toward determining membership in the Public Employees Retirement System.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for sections 308 and 310.

Staff Summary of Public Testimony: PRO: We have had devastating wildfire seasons in 2012, 2014, and 2015. The policy on this bill focused on improving prescribed burning and mechanical thinning. The smoke management plan has not been updated since 1998. Initial attack keeps fires small and costs down. DNR needs sufficient staff to keep aerial resources coordinated and deployed. This bill is a good step forward but there are a few bills that were left out that we would like to see added. This bill is an excellent comprehensive approach to move forward with wildfire prevention and management. We are supportive of the pilot projects and updating the smoke management plan but do have concerns about funding firefighters sufficiently. This committee should consider including the Ready, Set, Go program in this bill. We support this bill but every component of this bill points to the need for 21st Century GIS technology. We approve the focus on rapid response and to reduce fuel loads. This committee should amend the WUI Code incentive section to encourage jurisdiction so to adopt "some or all" of the WUI Code.

CON: BIAW opposes the incentive approach for WUI Code adoption. We think a work group makes more sense than a one-size-fits all code. The WUI is incomplete for our state.

OTHER: The National Guard is asking for funding for firefighting training, refresher training for those already trained, and to train our sergeants to be able to oversee our fire teams. We expect a difficult fire season again this coming year, and please keep in mind the firefighters by keeping them well-equipped. This bill will help DNR improve firefighting, but the fiscal note will say \$68 million, but there is only \$10 million appropriated in the Senate budget. The severity fund is a great proposal to reposition resources but needs to be funded. We support the pilot project and the accountability sections. The committee should adopt an amendment to require the agencies to translate prescribed burn and emergency notices languages other than English. We are concerned this bill does not provide sufficient funding for trained firefighters.

Persons Testifying: PRO: Debora Munguia, WA Forest Protection Assn.; Mel Sorensen, Property Casualty Insurers Association of America; Ryan Spiller, WA Fire Commissioners; Dan Smith, North Kitsap Fire & Rescue; Antonio Sanchez, Central Washington University; Tom Bugert, The Nature Conservancy of Washington; Doug Schindler, Mountains to Sound Greenway Trust; Tom Davis, WA Farm Bureau.

CON: Bill Stauffacher, Jan Himebaugh, Building Industry Association of Washington.

OTHER: Major General Bret Daugherty, WA Military Department; Michael White, Washington State Council of Fire Fighters; Ellicott Dandy, OneAmerica; Aaron Everett, DNR/State Forester; Loren Torgerson, DNR/Northeast Region Manager; Seamus Petrie, Washington Public Employees Association; Donna Christensen, Washington State Catholic Conference.

Persons Signed In To Testify But Not Testifying: No one.