
ENGROSSED SUBSTITUTE HOUSE BILL 2093

State of Washington

64th Legislature

2015 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Short, Blake, Buys, and Condotta)

READ FIRST TIME 02/20/15.

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) An individual with the title of fire commissioner whose
5 authority is pursuant to chapter 52.14 RCW;

6 (f) A representative of a federal wildland firefighting agency;

7 (g) A representative of a tribal nation;

8 (h) A representative of a statewide environmental organization;

9 (i) A representative of a state land trust beneficiary; and

10 (j) A small forest landowner.

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

13 (4) The department must provide staff support for all committee
14 meetings.

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

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

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

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

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

33 (b) No civil or criminal liability may be imposed by any court on
34 an individual acting pursuant to this section for any direct or
35 proximate adverse impacts resulting from an individual's access to
36 land for the purposes of attempting to extinguish or control a
37 wildland fire when fighting the wildland fire in that particular time
38 and location can be reasonably considered a public necessity, except

1 upon proof of gross negligence or willful or wanton misconduct by the
2 individual.

3 (c) An individual may enter land under this subsection (1) only
4 if:

5 (i) There is an active fire on or in near proximity to the land;

6 (ii) The individual has a reasonable belief that the local fire
7 conditions are creating an emergency situation and that there is an
8 imminent danger of a fire growing or spreading to or from the parcel
9 of land being entered;

10 (iii) The individual has a reasonable belief that preventive
11 measures will extinguish or control the wildfire;

12 (iv) The individual has a reasonable belief that he or she is
13 capable of taking preventive measures;

14 (v) The individual only undertakes measures that are reasonable
15 and necessary until professional wildfire suppression personnel
16 arrives;

17 (vi) The individual does not continue to take suppression actions
18 after specific direction to cease from the landowner;

19 (vii) The individual takes preventive measures only for the
20 period of time until efforts to control the wildfire have been
21 assumed by professional wildfire suppression personnel, unless
22 explicitly authorized by professional wildland firefighting personnel
23 to remain engaged in suppressing the fire;

24 (viii) The individual follows the instructions of professional
25 wildland firefighting personnel, including ceasing to engage in
26 firefighting activities, when directed to do so by professional
27 wildland firefighting personnel; and

28 (ix) The individual promptly notifies emergency personnel and the
29 landowner, lessee, or occupant prior to entering the land or within a
30 reasonable time after the individual attempts to extinguish or
31 control the wildland fire.

32 (d) Nothing in this section authorizes any person to materially
33 benefit from accessing land or retain any valuable materials that may
34 be collected or harvested during the time the individual attempts to
35 extinguish or control the wildland fire.

36 (e)(i) The authority to enter privately owned or publicly owned
37 land under this subsection (1) is limited to the minimum necessary
38 activities reasonably required to extinguish or control the wildland
39 fire.

1 (ii) Activities that may be reasonable under this subsection (1)
2 include, but are not limited to: Using hand tools to clear the ground
3 of debris, operating readily available water hoses, clearing
4 flammable materials from the vicinity of structures, unlocking or
5 opening gates to assist firefighter access, and safely scouting and
6 reporting fire behavior.

7 (iii) Activities that do not fall within the scope of this
8 subsection (1)(e), due to the high potential for adverse
9 consequences, include, but are not limited to: Lighting a fire in an
10 attempt to stop the spread of another fire; using explosives as a
11 firefighting technique; using aircraft for fire suppression; and
12 directing other individuals to engage in firefighting.

13 (f) Nothing in this subsection (1) confers a legal or civil duty
14 or obligation on a person to attempt to extinguish or control a
15 wildfire.

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

25 (i) The individual accessing the privately owned or publicly
26 owned land and the individual's personal property, including loss of
27 life;

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

30 (iii) Other landholdings; and

31 (iv) Overall environmental resources.

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

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

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

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

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

7 (3) The department shall:

8 (a) Enforce all laws within this chapter;

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

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

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

1 (iii) Absent a court order authorizing otherwise, the department
2 may not take possession or control of evidence over the objection of
3 an electric utility when the evidence is not owned by the utility but
4 has caused damage to property owned by the utility. However, this
5 subsection (3)(c)(iii) does not apply if the department has notified
6 the utility of its intent to take possession or control of the
7 evidence and provided the utility with reasonable time to examine,
8 document, and photograph the evidence.

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

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

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

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

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

21 (4) The department may:

22 (a) Authorize all needful and proper expenditures for forest
23 protection;

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

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

32 (d) Inquire into:

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

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

37 (e) Provide fire detection, prevention, presuppression, or
38 suppression services on nonforested public lands managed by the
39 department or another state agency, but only to the extent that
40 providing these services does not interfere with or detract from the

1 obligations set forth in subsection (3) of this section. If the
2 department provides fire detection, prevention, presuppression, or
3 suppression services on nonforested public lands managed by another
4 state agency, the department must be fully reimbursed for the work
5 through a cooperative agreement as provided for in RCW 76.04.135(1).

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

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

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

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

27 (a) Compile and annually update master lists of qualified
28 wildland fire suppression contractors who have valid incident
29 qualifications for the kind of contracted work to be performed. In
30 order to be included on a master list of qualified wildland fire
31 suppression contractors:

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

37 (ii) Contractors other than those identified in (a)(i) of this
38 subsection must have training and qualifications evidenced by
39 possession of a valid department qualification and safety document,

1 commonly called a blue card, issued to people cooperating with the
2 department pursuant to an agreement;

3 (b) Provide timely advance notification of the dates and
4 locations of department blue card training to all potential wildland
5 fire suppression contractors known to the department and make the
6 training available in several locations that are reasonably
7 convenient for contractors;

8 (c) Make the lists of qualified wildland fire suppression
9 contractors available to county legislative authorities, emergency
10 management departments, and local fire districts;

11 (d) Cooperate with federal wildland firefighting agencies to
12 maximize, based on predicted need, the efficient use of local
13 resources in close proximity to wildland fire incidents;

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

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

25 (2) Nothing in subsection (1) of this section prohibits the
26 department from conducting condensed safety training on the site of a
27 wildland fire in order to utilize available contractors not included
28 on a master list of qualified wildland fire suppression contractors.

29 (3) When entering into preemptive agreements with landowners
30 under this section, the department must ensure that:

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

32 (b) All contractors are, when engaged in fire suppression
33 activities, under the supervision of recognized wildland fire
34 personnel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (11) "Forest landowner," "owner of forest land," "landowner," or
9 "owner" means the owner or the person in possession of any public or
10 private forest land.

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

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

17 (14) "Landowner operation" means every activity, and supporting
18 activities, of a forest landowner and the landowner's agents,
19 employees, or independent contractors or permittees in the management
20 and use of forest land subject to the forest protection assessment
21 under RCW 76.04.610 for the primary benefit of the owner. The term
22 includes, but is not limited to, the growing and harvesting of forest
23 products, the development of transportation systems, the utilization
24 of minerals or other natural resources, and the clearing of land. The
25 term does not include recreational and/or residential activities not
26 associated with these enumerated activities.

27 (15) "Participating landowner" means an owner of forest land
28 whose land is subject to the forest protection assessment under RCW
29 76.04.610.

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

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

36 (18) "Slash burning" means the planned and controlled burning of
37 forest debris on forest lands by broadcast burning, underburning,
38 pile burning, or other means, for the purposes of silviculture,
39 hazard abatement, or reduction and prevention or elimination of a
40 fire hazard.

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

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

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

10 (22) "Local fire suppression assets" means firefighting equipment
11 that is located in close proximity to the wildland fire and that
12 meets department standards and requirements.

13 (23) "Local wildland fire liaison" means the person appointed by
14 the commissioner to serve as the local wildland fire liaison as
15 provided in section 1 of this act.

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