

# HOUSE BILL REPORT

## SSB 5025

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As Reported By House Committee On:  
Natural Resources & Parks

**Title:** An act relating to forest fires.

**Brief Description:** Clarifying forest fire fighting duties.

**Sponsors:** Senate Committee on Natural Resources (originally sponsored by Senator Owen).

**Brief History:**

Reported by House Committee on:  
Natural Resources & Parks, March 31, 1993, DPA.

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### HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Dunshee; Linville; Sheldon; Valle; and Wolfe.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Morton, Ranking Minority Member; Stevens, Assistant Ranking Minority Member; Schoesler; and Thomas.

**Staff:** Linda Byers (786-7129).

**Background:**

Department of Natural Resources' Firefighting Responsibility

In 1990, a group of landowners sued the state of Washington, acting through the Department of Natural Resources (DNR), for damages to the landowners' properties as a result of a fire which began on DNR land and subsequently escaped. Central to the arguments made in court, and to DNR's liability, was the issue of whether DNR owed a special duty to the landowners, separate from its duty to the public in general. The Washington State Supreme Court concluded that DNR did owe such a special duty and found in favor of the landowners.

Recovering Fire Suppression Costs

Under current law, the state, a municipality, or a forest protective association may recover the costs of fighting a fire if the fire has been caused by negligence, by creation

of an extreme fire hazard, or by allowing the build-up of forest debris. The person responsible for one or more of these three conditions is liable for the costs of fighting the fire. Current law excludes cost recovery for entities other than the state, a municipality, or a forest protective association. Federal agencies assisting with fire suppression efforts have had difficulty recovering their expenditures.

#### Fire Investigations

The Department of Natural Resources is obligated to investigate the origin and cause of all forest fires. Under current law, DNR does not have express statutory authority to seize evidence found in the course of an investigation.

#### **Summary of Amended Bill:**

#### Department of Natural Resources' Firefighting Responsibility

The Department of Natural Resources, when acting in good faith as a fire prevention and suppression agency, is carrying out duties owed to the public in general, and not to any individual person or class of persons separate and apart from the public. In particular, DNR owes no special duty to persons who pay forest protection or fire suppression assessments.

#### Recovering Fire Suppression Costs

Federal fire protection agencies assisting in fire suppression efforts are eligible to use the state's cost recovery law in the same manner as the state, a municipality, or a forest protective association. This ability for federal fire protection agencies to recover their costs applies only to expenses incurred after June 30, 1993.

#### Fire Investigations

The Department of Natural Resources is to investigate the origin and cause of all forest fires to determine if a criminal act or negligence by a person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, DNR is to work cooperatively with utilities, property owners, and other interested parties to identify and preserve evidence. With exceptions, the department is authorized to take possession and control, without a court order, of relevant evidence found in plain view. To the extent possible, DNR is to notify the owner of the evidence and provide a reasonable opportunity for the person, firm, or corporation owning the evidence to view,

examine, document, and photograph the evidence before the department takes possession or control. If the owner objects in writing to the department's taking possession or control of the evidence, DNR must return the evidence within seven days or obtain a court order authorizing continued possession or control.

Unless DNR has obtained a court order to do so, DNR may not take possession or control of evidence over the objection of the owner if the evidence is used by the owner in conducting a business or in providing electric utility service, and the department's taking possession or control substantially and materially interferes with the operation of the business or the provision of electric utility service. DNR must also have a court order to 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. DNR does not have to get a court order in this situation if the department has notified the utility and given the utility reasonable time to examine, document, and photograph the evidence.

**Amended Bill Compared to Substitute Bill:** The period of time during which DNR may have possession or control of evidence without a court order is reduced from 14 days to seven days. A new provision establishes that, absent a court order, DNR may not take possession or control of evidence if the owner of the evidence objects and if taking possession or control of the evidence substantially and materially interferes with the owner's business or the providing of electric utility services. A new provision also restricts DNR's authority to take possession or control of evidence which has caused damage to the property of an electric utility. There are other technical and clarifying changes in the amended bill.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For Substitute Bill:** DNR has worked with the utilities in drafting language about fire investigations. When DNR firefighters are in the middle of fighting a fire, they should not have to be trying to figure out which landowners paid fire protection assessments and which ones did not. In regard to fire investigations, DNR is doing this work on behalf of the public, trying to recover taxpayer dollars from people who start fires. If DNR is working to save a house, standing timber may be burning instead. The department needs clarification about its investigatory authority. Sometimes it is difficult to

obtain a court order quickly, and evidence can be destroyed. The department has no intention of holding up electric service or seizing trains.

**Testimony Against Substitute Bill:** There is authority in the bill for DNR to seize an entire train. Investigations of accidents involving railroads are handled by the Utilities and Transportation Commission, and overlap in authority could be a problem. It would be helpful to have a statement that there is no intent to impede interstate commerce. DNR needs to follow an established set of procedures in conducting fire investigations. Electric utilities are a special case and deserve special consideration. Two weeks is a long time to hold evidence if the department is holding equipment during harvest season.

**Witnesses:** Jennifer Belcher, Commissioner of Public Lands (in favor); Patrick Halstead, Burlington Northern and Union Pacific Railroads (in favor of amendment); Collins Sprague, Washington Water Power (in favor with amendment); Dave Arbaugh, Washington P.U.D. Association; Larry Shannon, Washington State Trial Lawyers Association (with questions); Tim Boyd, Washington Forest Protection Association (in favor); and K.O. Rosenberg, Northeast Tri-Counties (opposed).