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HOUSE BILL 1508

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Kretz, Blake, Short, Reykdal, and Condotta

Read first time 01/21/15. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to providing permissive authority for counties to  
2 assume authority over local forest fire management; amending RCW  
3 76.04.610, 76.04.630, 76.04.015, and 76.04.016; and adding a new  
4 section to chapter 76.04 RCW.

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

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

8 (1) Any county may, by action of its legislative authority,  
9 create a local forest fire protection division that is responsible  
10 for preventing and responding to forest fires in the county. If  
11 created, the local forest fire protection division assumes primary  
12 command over any fire response in the county and assumes independent  
13 decision-making authority over all local aspects of forest fire  
14 prevention and response.

15 (2) The department must be notified of the creation of a local  
16 forest fire protection division within thirty days of its creation.

17 (3) Two or more counties may organize into a single local forest  
18 fire protection division.

19 (4) The department must, upon the request of a county's local  
20 forest fire protection division, assist the county in any fire  
21 response necessary to protect public safety.

1       **Sec. 2.** RCW 76.04.610 and 2012 2nd sp.s. c 7 s 922 are each  
2 amended to read as follows:

3       (1)(a) If any owner of forest land within a forest protection  
4 zone neglects or fails to provide adequate fire protection as  
5 required by RCW 76.04.600, the department shall provide such  
6 protection and shall annually impose the following assessments on  
7 each parcel of such land: (i) A flat fee assessment of seventeen  
8 dollars and fifty cents; and (ii) twenty-seven cents on each acre  
9 exceeding fifty acres.

10       (b) Assessors may, at their option, collect the assessment on tax  
11 exempt lands. If the assessor elects not to collect the assessment,  
12 the department may bill the landowner directly.

13       (2) An owner who has paid assessments on two or more parcels,  
14 each containing fewer than fifty acres and each within the same  
15 county, may obtain the following refund:

16       (a) If all the parcels together contain less than fifty acres,  
17 then the refund is equal to the flat fee assessments paid, reduced by  
18 the total of (i) seventeen dollars and (ii) the total of the amounts  
19 retained by the county from such assessments under subsection ~~((+5+))~~  
20 (7) of this section.

21       (b) If all the parcels together contain fifty or more acres, then  
22 the refund is equal to the flat fee assessments paid, reduced by the  
23 total of (i) seventeen dollars, (ii) twenty-seven cents for each acre  
24 exceeding fifty acres, and (iii) the total of the amounts retained by  
25 the county from such assessments under subsection ~~((+5+))~~ (7) of this  
26 section.

27       (3) Applications for refunds shall be submitted to the department  
28 on a form prescribed by the department and in the same year in which  
29 the assessments were paid. The department may not provide refunds to  
30 applicants who do not provide verification that all assessments and  
31 property taxes on the property have been paid. Applications may be  
32 made by mail.

33       (4)(a) In addition to the procedures under this subsection,  
34 property owners with multiple parcels in a single county who qualify  
35 for a refund under this section may apply to the department on an  
36 application listing all the parcels owned in order to have the  
37 assessment computed on all parcels but billed to a single parcel.  
38 ~~((Property owners with the following number of parcels may apply to~~  
39 ~~the department in the year indicated:~~

1	Year	Number of Parcels
2	2002	10 or more parcels
3	2003	8 or more parcels
4	2004 and thereafter	6 or more parcels))

5       **(b)** The department must compute the correct assessment and  
6 allocate one parcel in the county to use to collect the assessment.  
7 The county must then bill the forest fire protection assessment on  
8 that one allocated identified parcel. The landowner is responsible  
9 for notifying the department of any changes in parcel ownership.

10       ~~((3) Beginning January 1, 1991,))~~ **(5)** Under the administration  
11 and at the discretion of the department, up to two hundred thousand  
12 dollars per year of this assessment shall be used in support of those  
13 rural fire districts assisting the department in fire protection  
14 services on forest lands.

15       ~~((4))~~ **(6)** For the purpose of this chapter, the department may  
16 divide the forest lands of the state, or any part thereof, into  
17 districts, for fire protection and assessment purposes, may classify  
18 lands according to the character of timber prevailing, and the fire  
19 hazard existing, and place unprotected lands under the administration  
20 of the proper district. Amounts paid or contracted to be paid by the  
21 department for protection of forest lands from funds at its disposal  
22 shall be a lien upon the property protected, unless reimbursed by the  
23 owner within ten days after October 1st of the year in which they  
24 were incurred. The department shall be prepared to make statement  
25 thereof, upon request, to a forest owner whose own protection has not  
26 been previously approved as to its adequacy, the department shall  
27 report the same to the assessor of the county in which the property  
28 is situated. The assessor shall extend the amounts upon the tax rolls  
29 covering the property, and upon authorization from the department  
30 shall levy the forest protection assessment against the amounts of  
31 unimproved land as shown in each ownership on the county assessor's  
32 records. The assessor may then segregate on the records to provide  
33 that the improved land and improvements thereon carry the millage  
34 levy designed to support the rural fire protection districts as  
35 provided for in RCW 52.16.170.

36       ~~((5))~~ **(7)(a)** The amounts assessed shall be collected at the  
37 time, in the same manner, by the same procedure, and with the same  
38 penalties attached that general state and county taxes on the same

1 property are collected, except that errors in assessments may be  
2 corrected at any time by the department certifying them to the  
3 treasurer of the county in which the land involved is situated.  
4 Assessments shall be known and designated as assessments of the year  
5 in which the amounts became reimbursable.

6 (b) Except for counties that have created a local forest fire  
7 protection division under section 1 of this act, upon the collection  
8 of assessments, the county treasurer shall place fifty cents of the  
9 total assessments paid on a parcel for fire protection into the  
10 county current expense fund to defray the costs of listing, billing,  
11 and collecting these assessments. The treasurer shall then transmit  
12 the balance to the department.

13 (c) For counties that have created a local forest fire protection  
14 division under section 1 of this act, the county treasurer shall  
15 place all collections in a local account designated by the county  
16 legislative authority to be used exclusively for local forest fire  
17 prevention and response.

18 (d) Collections shall be applied against expenses incurred in  
19 carrying out the provisions of this section, including necessary and  
20 reasonable administrative costs incurred by the department in the  
21 enforcement of these provisions. The department may also expend sums  
22 collected from owners of forest lands or received from any other  
23 source for necessary administrative costs in connection with the  
24 enforcement of RCW 76.04.660.

25 ~~((+6))~~ (8) When land against which forest protection assessments  
26 are outstanding is acquired for delinquent taxes and sold at public  
27 auction, the state or, if appropriate, the county shall have a prior  
28 lien on the proceeds of sale over and above the amount necessary to  
29 satisfy the county's delinquent tax judgment. The county treasurer,  
30 in case the proceeds of sale exceed the amount of the delinquent tax  
31 judgment, shall immediately remit to the department or the county the  
32 amount of the outstanding forest protection assessments.

33 ~~((+7))~~ (9)(a) All nonfederal public bodies owning or  
34 administering forest land included in a forest protection zone shall  
35 pay the forest protection assessments provided in this section and  
36 the special forest fire suppression account assessments under RCW  
37 76.04.630. The forest protection assessments and special forest fire  
38 suppression account assessments shall be payable by nonfederal public  
39 bodies from available funds within thirty days following receipt of

1 the written notice from the department which is given after October  
2 1st of the year in which the protection was provided.

3 (b) Unpaid assessments are not a lien against the nonfederal  
4 publicly owned land but shall constitute a debt by the nonfederal  
5 public body to the department or the appropriate county and are  
6 subject to interest charges at the legal rate. (~~During the 2011-2013~~  
7 ~~fiscal biennium, the forest fire protection assessment account may be~~  
8 ~~appropriated to The Evergreen State College for analysis and~~  
9 ~~recommendations to improve the efficiency and effectiveness of the~~  
10 ~~state's mechanisms for funding fire prevention and suppression~~  
11 ~~activities.~~

12 ~~(+8))~~ (10) A public body, having failed to previously pay the  
13 forest protection assessments required of it by this section, which  
14 fails to suppress a fire on or originating from forest lands owned or  
15 administered by it, is liable for the costs of suppression incurred  
16 by the department or its agent and is not entitled to reimbursement  
17 of costs incurred by the public body in the suppression activities.

18 ~~((+9))~~ (11) The department may adopt rules to implement this  
19 section, including, but not limited to, rules on levying and  
20 collecting forest protection assessments.

21 **Sec. 3.** RCW 76.04.630 and 2010 1st sp.s. c 7 s 129 are each  
22 amended to read as follows:

23 (1) There is created a landowner contingency forest fire  
24 suppression account in the state treasury. Moneys in the account may  
25 be spent only as provided in this section. Disbursements from the  
26 account shall be on authorization of the commissioner of public lands  
27 or the commissioner's designee. The account is subject to the  
28 allotment procedure provided under chapter 43.88 RCW, but no  
29 appropriation is required for disbursements.

30 (2) The department may expend from this account the amounts as  
31 may be available and as it considers appropriate for the payment of  
32 emergency fire costs resulting from a participating landowner fire.  
33 The department may, when moneys are available from the landowner  
34 contingency forest fire suppression account, expend moneys for  
35 summarily abating, isolating, or reducing an extreme fire hazard  
36 under RCW 76.04.660. All moneys recovered as a result of the  
37 department's actions, from the owner or person responsible, under RCW  
38 76.04.660 shall be deposited in the landowner contingency forest fire  
39 suppression account.

1       (3) When a determination is made that the fire was started by  
2 other than a landowner operation, moneys expended from this account  
3 in the suppression of such fire shall be recovered from the general  
4 fund appropriations as may be available for emergency fire  
5 suppression costs. The department shall deposit in the landowner  
6 contingency forest fire suppression account moneys paid out of the  
7 account which are later recovered, less reasonable costs of recovery.

8       (4)(a) This account shall be established and renewed by an annual  
9 special forest fire suppression account assessment paid by  
10 participating landowners at a rate to be established by the  
11 department. In establishing assessments, the department shall seek to  
12 establish and thereafter reestablish a balance in the account of  
13 three million dollars.

14       (b) The department may establish a flat fee assessment of no more  
15 than seven dollars and fifty cents for participating landowners  
16 owning parcels of fifty acres or less. For participating landowners  
17 owning parcels larger than fifty acres, the department may charge the  
18 flat fee assessment plus a per acre assessment for every acre over  
19 fifty acres. The per acre assessment established by the department  
20 may not exceed fifteen cents per acre per year. The assessments  
21 established under this subsection may differ to equitably distribute  
22 the assessment based on emergency fire suppression cost experience  
23 necessitated by landowner operations.

24       (c) Amounts assessed for this account shall be a lien upon the  
25 forest lands with respect to which the assessment is made and may be  
26 collected as directed by the department in the same manner as forest  
27 protection assessments.

28       (d) Payment of emergency costs from this account shall in no way  
29 restrict the right of the department to recover costs pursuant to RCW  
30 76.04.495 or other laws.

31       (e) Any assessments collected under this chapter in a county that  
32 has created a local forest fire protection division under section 1  
33 of this act must be transferred to the county where the assessments  
34 were collected at least once per fiscal year.

35       (5) When the department determines that a forest fire was started  
36 in the course of or as a result of a landowner operation, the  
37 determination shall be final, unless, within ninety days of the  
38 notification, or an interested party serves a request for a hearing  
39 before the department. The hearing shall constitute an adjudicative  
40 proceeding under chapter 34.05 RCW, the administrative procedure act,

1 and an appeal shall be in accordance with RCW 34.05.510 through  
2 34.05.598.

3 **Sec. 4.** RCW 76.04.015 and 2012 c 38 s 1 are each amended to read  
4 as follows:

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

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

11 (3) The department shall:

12 (a) Enforce all laws within this chapter;

13 (b) Be empowered to take charge of and direct the work of  
14 suppressing forest fires in counties that have not created a local  
15 forest fire protection division under section 1 of this act;

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

38 (ii) Absent a court order authorizing otherwise, the department  
39 may not take possession or control of evidence over the objection of

1 the owner of the evidence if the evidence is used by the owner in  
2 conducting a business or in providing an electric utility service and  
3 the department's taking possession or control of the evidence would  
4 substantially and materially interfere with the operation of the  
5 business or provision of electric utility service.

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

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

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

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

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

24 (4) The department may:

25 (a) Authorize all needful and proper expenditures for forest  
26 protection;

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

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

35 (d) Inquire into:

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

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

1 (e)(i) Provide fire detection, prevention, presuppression, or  
2 suppression services on nonforested public lands managed by the  
3 department or another state agency, but only to the extent that  
4 providing these services does not interfere with or detract from the  
5 obligations set forth in subsection (3) of this section.

6 (ii) If the department provides fire detection, prevention,  
7 presuppression, or suppression services on nonforested public lands  
8 managed by another state agency, the department must be fully  
9 reimbursed for the work through a cooperative agreement as provided  
10 for in RCW 76.04.135(1).

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

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

28 **Sec. 5.** RCW 76.04.016 and 1993 c 196 s 1 are each amended to  
29 read as follows:

30 The department, and any county that has created a local forest  
31 fire protection division under section 1 of this act, when acting, in  
32 good faith, in its statutory capacity as a fire prevention and  
33 suppression agency, is carrying out duties owed to the public in  
34 general and not to any individual person or class of persons separate  
35 and apart from the public. Nothing contained in this title, including  
36 but not limited to any provision dealing with payment or collection  
37 of forest protection or fire suppression assessments, may be  
38 construed to evidence a legislative intent that the duty to prevent  
39 and suppress forest fires is owed to any individual person or class

1 of persons separate and apart from the public in general. This  
2 section does not alter the department's duties and responsibilities  
3 as a landowner.

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