

FINAL BILL REPORT

ESSB 5972

C 81 L 14
Synopsis as Enacted

Brief Description: Specifying recovery for fire damages to public or private forested lands.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pearson, Rolfes, Hargrove, Mullet, Sheldon, Hewitt, Cleveland, Honeyford, Fain, Hill, Braun, Fraser, Litzow, Parlette, Frockt and Kline; by request of Commissioner of Public Lands).

Senate Committee on Natural Resources & Parks
House Committee on Agriculture & Natural Resources
House Committee on Judiciary

Background: Statutory Forest Fire Liability. In general, failure by a landowner to take reasonable care to prevent fire from spreading creates liability to any person suffering damage as a result.

More specifically, a person whose negligence is responsible for the start or existence of a fire is liable for the reasonable expenses of the responding firefighting entity. Likewise, those with knowledge of the existence of a fire must undertake reasonable suppression efforts or face liability for subsequent firefighting costs.

Common Law Forest Fire Liability. The longstanding common law rule is that a landowner is liable for damages proximately caused by negligence in starting or controlling a fire. In general, recoverable damages are those proximately resulting from that negligence. In determining damages, Washington courts have stated the intent to place the injured party as nearly as possible in the condition they would be had the injury not occurred.

The measure of property damage in a particular case is based on the type and extent of the damage. Common methods recognized by Washington courts include the following: the reasonable cost of restoration, which is generally applied in cases where damage can be repaired; or the difference between the value of the property before and after the injury, which is generally applied when damage is irreparable. For personal property damage that can be repaired, the general measure of damages is the lesser of the cost of restoration or the diminution in property value. While establishing these general rules, state courts have exercised flexibility in awarding damages depending on the particular circumstances.

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.

Summary: Establishes an Exclusive Statutory Cause of Action. A new statutory cause of action is established for property damage to public or private forested lands (forested lands) resulting from a fire that started on or spread from forested lands. An affected owner of forested lands must bring this action in superior court. When it applies, the cause of action is the exclusive remedy for fire-related property damage.

Liability and Recoverable Damages. Liability under the new cause of action attaches where a person's action or inaction relates to the start or spread of a fire, constitutes negligence or a higher degree of fault, and is a proximate cause of the property damage.

When liability attaches, recoverable property damages are limited to the following:

- Either (1) the difference in fair market value of the property immediately before and after the fire, or (2) the reasonable cost of restoration, to the extent permitted by Washington law. The fair market value determination for real property must be made by a state-certified real estate appraiser after evaluation of specified aspects of the property and consistent with standards of professional appraisal practice applicable to these appraisers.
- Reasonable fire suppression expenses, unless otherwise provided for in the fire protection statutes.
- Any other objectively verifiable monetary loss, such as loss of earnings, loss of use of property, and loss of business and employment opportunities.
- Damages for injury to archaeological objects, archaeological sites, or historic archeological resources in an action brought by a tribe, to be measured under an existing rule of the Department of Archaeology and Historic Preservation that provides for identification of an independent investigator and necessary site restoration actions.

Application. The new cause of action applies to property damage to forested lands resulting from a fire that started on or spread from forested lands.

Forested lands are those capable of growing tree species suitable for producing wood-based forest products, regardless of the existing land use. However, the term excludes lands where the predominant physical use of the land is inconsistent with growing, conserving, or preserving these tree species. Examples of inconsistent use include home sites of up to ten acres, airports, parking lots, cropfields, pastures, roads, and railroad and utility rights of way.

Other terms are defined. Corresponding changes are made to several statutes.

Votes on Final Passage:

Senate	35	12	
House	98	0	(House amended)
Senate	48	1	(Senate concurred)

Effective: June 12, 2014