



Oregon

John A. Kitzhaber, MD, Governor

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"STEWARDSHIP IN FORESTRY"

Senator Floyd Prozanski, Chair
Senate Judiciary Committee
Room 331, State Capitol
Salem, Oregon 97310

RE: SB 709 – Civil Liability for Injury or Damage Resulting From Forest Fire

Dear Chair Prozanski and Members of the Committee:

Thank you for the opportunity to provide testimony in support of Senate Bill 709.

The Department of Forestry has been tracking with interest the fallout from several lawsuits brought by the United States Attorney in California over the last several years and in particular the case involving the "Moonlight Fire" of 2007. In this particular case, Sierra Pacific Industries and several other defendants were sued for several hundred million dollars in federal court based on provisions of California law. Sierra Pacific settled rather than challenge the merits of the case because of rulings of the court that revealed considerable gaps in California law regarding how liability might be assigned and a lack of reasonableness as to how damages might be valued or determined. In the interest of maintaining healthy forests and maintaining rural jobs and economies, we feel it is important to ensure that Oregon's laws on fire liability can be interpreted clearly as the Legislative Assembly intends.

The essence of SB 709 is that it does not create any new causes of action for damages from forest fires but it uses the same general concept, with adjustments for modern circumstances, that has existed in Oregon law for decades as ORS 477.090. The bill makes the replacement section for 477.090 the exclusive remedy for this narrow class of injuries or destruction of property from forest fires to limit "creative lawyering" as in the Moonlight case. This means that damages from fire cannot be construed to be a "timber trespass" warranting treble damages or other creative ways of multiplying the awards that are due when fault is proven. The bill still allows doubling of damages if the liable party acted recklessly or with gross negligence, willfully or with malice, but provides for single damages if the party was engaged in otherwise lawful pursuits. Logging or slash burning, which by their very nature introduce sources of ignition into the forest environment, are encouraged under Oregon law as good forest management with a recognition that there is always a potential for fires to escape, but liability should be limited, as it is for fire suppression costs under ORS 477.120. Under the bill, escape of fire from lawful activities or that is not grossly negligent, etc., is subject to restitution in the form of single damages.

Further, the bill defines how damages are determined. All of the various considerations of difficult to quantify values such as scenery, recreation, wildlife habitat, etc., are still included, but must come under the constraints of "the value of the property before the fire, less the value of the property after the fire" that a willing buyer would pay to a willing seller as determined by a certified land appraiser, and any other objectively verifiable monetary loss.

Development of this bill was undertaken with a keen appreciation for the fact that any person, corporation, or government agency that owns forestland in Oregon could find themselves as either a plaintiff or a defendant in an action for fire damages. As such, it recognizes the significant distress that a landowner will encounter if they are victim of a fire spreading to their land from the forestland of another, or as a result of the negligence of an uninvited visitor to their land, and make possible compensation for the time and value lost in timber and other amenities, but still attempts to restrict any undue windfalls, as was arguably the case in California.

The Department of Forestry, in addition to representing the State of Oregon as a forestland owner, also has an interest in this bill because of its statutory responsibilities in the realm of fire suppression. We would like to point out that this bill, in part, addresses the potential recovery of fire suppression costs as part of the damages from fire. It is our interpretation that the bill intends only to address the individual fire suppression costs of a landowner who may take suppression action beyond any legally required effort and separate from that of the State Forester or other agency or association with specific suppression responsibilities. As such, we believe that the existing provisions of Chapter 477, and especially ORS 477.064 to 477.085 and 477.120 still govern the processes for fire cost recovery of the appropriate agencies. Those do not provide any recovery greater than the provisions of this bill, but in many cases may limit the recovery of agencies in ways that are not applicable to individual landowners.

We urge your support of the bill as presented in the -1 amendments and ask that you move it forward, with a "do-pass" recommendation. If the department or I can be of further assistance in bringing this bill to completion, please contact me at (503) 945-7436 or e-mail to cstone@odf.state.or.us.

Sincerely,



Charlie Stone
Protection Policy Analyst

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