CASE NO. 91744-2

Court of Appeals No. 318532-III

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner is the Public Utility District No. 1 of Klickitat County ("KPUD"). Respondent is the State of Washington, Department of Natural Resources ("DNR").

II. IDENTITY OF DECISION OF COURT OF APPEALS

Review is sought of *State of Washington, Department of Natural Resources v. Public Utility District No. 1 of Klickitat County*, No. 31853-2-III, filed April 30, 2015. A copy of the filed decision is included in the Appendix.

III. ISSUES PRESENTED FOR REVIEW

A. **Whether the statutory phrases "any person, firm, or corporation . . . shall be liable" and "[DNR] shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1)" in RCW 76.04.495 include governmental entities, such as a Public Utility District?**

B. **Whether RCW 1.16.080 should be employed to interpret or expand the meaning of "person" as used in RCW 76.04.495 to include governmental entities, such as a Public Utility District?**

C. **Whether the published decision of the Court of Appeals interpreting RCW 76.04.495 is consistent with settled canons of statutory construction?**

IV. STATEMENT OF THE CASE

On August 26, 2010, part of a green ponderosa pine tree broke off during a high-wind event and fell across a power line owned by KPUD,

starting the Highway 8 Fire. (CP 83-84) The tree stump stood about 30 feet from the power lines. (*Id.*)

DNR brought suit against KPUD on July 2, 2012. (CP 80-87) The sole stated cause of action is for "Fire Suppression Cost Recovery under RCW 76.04.495." (*Id.*) DNR does not seek common-law tort damages from KPUD, only the agency's fire suppression costs under the statute. (*Id.*)

KPUD moved to dismiss DNR's RCW 76.04.495 claim. (CP 21-23; CP 24-45) The trial court denied KPUD's motion, but certified the question of statutory interpretation to the Court of Appeals. (CP 72-73)

The Court of Appeals granted review, and affirmed the trial court's denial of KPUD's CR 12(b)(6) motion in *State of Washington, Department of Natural Resources v. Public Utility District No. 1 of Klickitat County*, No. 31853-2-III, filed April 30, 2015.

V. ARGUMENT

A. RCW 76.04.495, Permitting Cost Recovery By A Governmental Agency, Is In Derogation Of The Common Law And Must Be Strictly Construed.

RCW 76.04.495(1) establishes a cause of action for governmental agencies to recover fire suppression costs (as opposed to tort damages) from negligent "person[s], firm[s], or corporation[s]", and is in derogation of the common law, meaning it must be strictly construed. *See United*

States v. Burlington Northern, Inc., 500 F.2d 637, 639 (9th Cir. 1974) (citing Washington law). *See also Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 437, 824 P.2d 541 (1992) ("Statutes in derogation of the common law are strictly construed and no intent to change that law will be found unless it appears with clarity.").

RCW 76.04.495(2) establishes a lien right, which likewise requires strict construction. *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 695-97, 261 P.3d 109 (2011) ("Statutes creating liens are in derogation of the common law and are to receive a strict construction.") (internal cite and quote omitted).

The Court of Appeals determined to "expansively construe" RCW 76.04.495. This is contrary to Washington law, which requires statutes that derogate from the common law be strictly construed.

B. RCW 76.04.495 Concerns Actions By Governmental Entities Against Private Persons and Businesses For Recovery Of Agency Fire Suppression Costs.

The Court of Appeals has held that the plain meaning of RCW 76.04.495 established a cause of action for governmental entities against each other, as well as for governmental entities against private persons and businesses. RCW 76.04.495, provides, in pertinent part:

> (1) **Any person, firm, or corporation** . . . Whose negligence is responsible for the starting or existence of a fire which spreads on forest land . . . **shall be liable** for any

> reasonable expenses made necessary . . . . The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire . . . .
>
> (2) **The department or agency** incurring such expense **shall have a lien** for the same **against any property of the person, firm, or corporation liable under subsection (1)** of this section[.]

(emphasis added).

A statute must not be interpreted in a way that renders any portion meaningless or superfluous. *Jongeward v. BNSF Ry.*, 174 Wn.2d 586, 602, 278 P.3d 157 (2012). "A fundamental canon of construction holds a statute should not be interpreted so as to render one part inoperative." *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 969, 977 P.2d 554 (1999).

Here, the phrase "person, firm, or corporation" is expressly used synonymously within the two subsections of RCW 76.04.495. Subsection (1) creates a cause of action for governmental entities against private persons and businesses to recover fire suppression costs. Subsection (2) provides that the governmental entity "shall have a lien" for its expenses "against any property of the person, firm, or corporation liable under subsection (1)[.]".

Under both subsections, the phrase "person, firm, or corporation" refers to private persons and entities, and is contrasted with the

governmental entities entitled to recover suppression costs, and, moreover, must be a person or entity whose property is legally capable of having a lien placed upon it.

KPUD is a governmental entity, and the property of KPUD is public property.

"Our Supreme Court has held, without exception that public property is not subject to any lien." *Hazelwood v. Bremerton*, 137 Wn. App. 872, 884, 155 P.3d 952 (2007) (internal citation omitted). "Washington courts continue to follow this precedent." *Id.* Furthermore, the "Legislature is presumed to know the law in the area in which it is legislating, and statutes will not be construed in derogation of the common law absent express legislative intent to change the law." *Wynn v. Earwin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008).

> In construing . . . a statute, the court must examine the purpose [and] the historical background . . . . If a statute is in derogation of a common law principle, it is to be construed strictly. If a statute substantially alters a common law principle, the intent to do so must be apparent from an express declaration, legislative history or the words themselves.

State v. A.N.W. Seed Corporation, 116 Wn.2d 39, 45, 802 P.2d 1353 (1991) (internal citation omitted).

Since the phrase "person, firm, or corporation" concerns private persons and entities, which must be legally capable of having a lien placed

upon their property, and since KPUD, a governmental entity with public property, is not subject to liens under settled Washington law, the phrase "person, firm, or corporation" within RCW 76.04.495 cannot include governmental entities.

The Court of Appeals held that because use of the lien mechanism described in subsection (2) of the statute is at the option of DNR, interpreting the statute to include governmental entities is permissible. Respectfully, KPUD believes this misses the point. The question is not whether DNR chooses to use the lien or not – the question is the meaning of the phrase within the statute, and therefore the scope of the statute itself. The phrase "person, firm, or corporation" is identical in subsections (1) and (2) of the statute. Subsection (1) juxtaposes private persons and businesses on the one hand, with governmental entities on the other; and subsection (2) provides that governmental entities "shall have a lien" upon the property of the "person, firm, or corporation liable under subsection (1)[.]" The frequency of the DNR's use of a statutory mechanism is independent of, and immaterial to the determination of the meaning of the phrase within the statute.

Consequently, the Court of Appeals' interpretation is in error, and KPUD requests that this Court grant review.

C. The Context Of The Statutory Language, And Contemporaneous Legislative Enactments, Demonstrate The Phrase "Person, Firm, Or Corporation" Does Not Include Governmental Entities.

RCW 76.04.495 was first enacted in 1923, and has not substantially changed since, save for a division from a single paragraph into the two present subsections.

The Eighteenth Legislature enacted 187 chapters of law in the 1923 regular session. KPUD was able to locate the phrase "person, firm or corporation" approximately 50 times in the 187 chapters of the laws of 1923. However, there does not appear to be an instance where the phrase "person, firm or corporation" in those other enactments refers to a governmental entity.[1] In one instance, the Legislature defined "person, firm or corporation" to be comprised of private entities. *See* Laws of 1923, Ch. 134 § 2 ("person" is a natural person, "firm" and "corporation" are domestic or foreign private entities).

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[1] *See* Laws of 1923, Ch. 26 § 2 (insurance agent regulation); Laws of 1923, Ch. 27 § 6, 10, 12 (milk and cream regulation); Laws of 1923, Ch. 37 § 4 (insecticide and fungicide regulation); Laws of 1923, Ch. 37 § 7 (nurserymen regulation); Laws of 1923, Ch. 54 § 1 (billiard and pool table owners); Laws of 1923, Ch. 81 § 2, 4 (liquid fuel excise tax); Laws of 1923, Ch. 89 § 8 (possession of game and song birds); Laws of 1923, Ch. 90 § 9, 10 (regulating salmon and sturgeon businesses); Laws of 1923, Ch. 126 § 1 (weight of bread for sale); Laws of 1923, Ch. 134 § 3, 11, 12 (commission merchants); Laws of 1923, Ch. 136 § 1 (worker's compensation); Laws of 1923, Ch. 137 § 6 (license for agricultural sales); Laws of 1923, Ch. 146 § 1 (warehouse regulation); Laws of 1923, Ch. 172 § 9, 18 (securities regulations); Laws of 1923, Ch. 181 § 4, 6 (motor vehicle and roadway encroachment regulations); and Laws of 1923, Ch. 184 § 7 (posting of lit tobacco warnings on railcars).

In one section concerning worker's compensation, the Lgislature distinguished between a "person, firm or corporation" on the one hand, and a "municipal corporation" on the other. Laws of 1923, Ch. 136 § 5.[2]

The 1923 Legislature did enact provisions concerning cities, towns, and municipal corporations generating and providing electrical power, much as Public Utility Districts would do after their creation in 1931.

> Any city or town within the State of Washington now or hereafter owning or operating its own electrical plant, shall have the right to sell and dispose of any surplus energy that it may generate to any other city or town or municipal corporation, governmental agency, firm, person, or corporation for use outside the corporate limits of such city or town.

Laws of 1923, Ch. 87 § 1.

When the 1923 Legislature was considering municipal corporations in the context of the generation of electrical power, it treated municipal corporations, cities, towns, and governmental entities as being distinct from firms, persons, and corporations.

The statute in question here, presently codified at RCW 76.04.495, was enacted as part of Chapter 184, which concerned Forests and Forest Fires. Section 11, the portion pertinent here, is comprised of four

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[2] That statute regulated the situation where a public entity such as a municipal corporation contracted with a "person, firm or corporation" for the purposes of performing "extra-hazardous" work.

subsections.[3] Laws of 1923, Ch. 184 § 11. First, the section containing the "person, firm or corporation" language was enacted. Second, a misdemeanor was established for permitting a fire to spread to property of another. Third, a misdemeanor was established for refusing to obey the orders of the director of the department of conservation. Fourth:

> Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine[.]

Laws of 1923, Ch. 184 § 11.

Notably, the phrase "owned by the state, or by any person, firm or corporation", distinguishes between public (state) and private (person, firm, or corporation).

The 1923 Legislature could not have intended to specifically include public utility districts within the phrase "person, firm, or corporation," as public utility districts were not created until 1931. Municipal corporations did exist in 1923, although contemporaneous enactments by that

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[3] Section 1 created the authority for fire protection districts, but was vetoed. Laws of 1923, Ch. 184 § 1. Section 2 authorized forest wardens. Laws of 1923, Ch. 184 § 2. Section 3 created *ex offico* rangers. Laws of 1923, Ch. 184 § 3. Section 4 concerned burn bans and fines, but was vetoed. Laws of 1923, Ch. 184 § 4. Section 5 concerned supervised burning. Laws of 1923, Ch. 184 § 5. Section 6 concerned spark-emitting locomotives. Laws of 1923, Ch. 184 § 6. Section 7 concerned telegraph rights of way and forbid disposing of lit tobacco products in the forest. Laws of 1923, Ch. 184 § 7. Section 8 concerned logging regulations. Laws of 1923, Ch. 184 § 8. Section 9 concerned criminal penalties for intentionally or negligently setting fires. Laws of 1923, Ch. 184 § 9. Section 10 authorized the state supervisor of forestry to tax forest land owners for the purposes of fire protection. Laws of 1923, Ch. 184 § 10.

Legislature demonstrate that the phrase "person, firm, or corporation" referred to individuals and private businesses, rather than governmental entities.

The Court of Appeals' holding that the Legislature intended to include governmental entities within the phrase "person, firm, or corporation" as used in RCW 76.04.495 is contradicted by the enactments of the 1923 Legislature. KPUD requests that this Court grant its Petition for Review on that basis.

D. The Court Of Appeals' Use Of RCW 1.16.080 To Expand The Meaning Of The Term "Person" Within The Phrase "Person, Firm, Or Corporation" Is Inconsistent With This Court's Precedent.

In the cases of record which employ or refer to RCW 1.16.080(1), the statute is used to supplement or interpret the use of the term "person" where the term "person" appears in **isolation** within a statute and without an accompanying definition.[4] It does not appear that RCW 1.16.080(1) has

[4] In 1923, the statute currently codified at RCW 1.16.080 was the Laws of 1891, Ch. 23 § 1, compiled at RRS § 146 (1922). The statute was initially enacted in 1854, and read: "When the term 'person' or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporations, as well as an individual." Laws of 1854, p. 99 § 134. The statute was later revised to read: "The term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual." Laws of 1891, Ch. 23 § 1. The language in effect in 1923 was the same as that in the Laws of 1891, and was codified at RRS § 146 (1922). The 1922 Remington reviser's note provides that the statute was interpreted in *Denny Hotel Co. of Seattle v. Schram*, 6 Wn. 134, 32 P. 1002 (1893). In *Denny*, the court held that it ". . . [did] not think that a corporation was within the contemplation of the legislature when they used the expression 'two or more persons'. . . It is true that the term

been applied to situations where a statute uses a list of terms to describe the subjects to which it applies, such as the phrase "person, firm, or corporation" contained in RCW 76.04.495.

Moreover, the Court of Appeals' decision appears to be the first case of record which employs RCW 1.16.080(1) to expand the statutory meaning of the phrase "person, firm, or corporation" to include a governmental entity under the term "person."

In *Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 238 P.3d 1107 (2010), this Court rejected the application of RCW 1.16.080 to expand the scope of the statutory term "person." The issue in *Segaline* was "whether a government agency that reports information to another government agency is a "person" under RCW 4.24.510." *Segaline,* 169 Wn.2d at 474. The *Segaline* court noted that "person" is ambiguous in the statute and its meaning varies within Washington code. *Id.* The Court held that "a government agency is not a "person" under RCW 4.24.510." *Id.* Although the State argued that RCW 1.16.080(1) required state agencies to be included as a "person" under RCW 4.24.510, this Court disagreed:

> [RCW 1.16.080 (1)] does not compel the court to broadly construe "person," but rather the use of "may" permits the court to interpret "person" to include such entities. This

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'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. But it does not follow, by any means, that the term 'person' is always to be construed as a private corporation, any more than it is always to be construed as the United States." *Id.* at 137.

> permissive language demonstrates the Legislature intended "person" to be defined in specific provisions of the RCW in accordance with the nature and purpose of those provisions. If RCW 1.16.080(1) compelled a broad interpretation of "person" throughout the RCW, it would produce absurd results. For instance, government agencies or corporations could be charged with murder.

Segaline, 169 Wn.2d at 475 (internal citation omitted).

Similarly, in *Liquor Control Bd. v. Personnel Bd.*, 88 Wn.2d 368, 374, 561 P.2d 195 (1977), this Court explained that when the Legislature does not define the term "person" within an Act, and also uses other terms (*e.g.* agency, person, party) non-interchangeably throughout that Act, the Legislature did not intend the term "person" to be read broadly vis-à-vis RCW 1.16.080.[5]

Further, the Court of Appeals' interpretation requires improperly rendering the terms "firm" and "corporation" superfluous or redundant. Applying RCW 1.16.080 to RCW 76.04.495, the term "person" in the statute could include the United States, this state, any state or territory, any public or private corporation or limited liability company, individual, firm, or corporation.

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[5] *See also In re Eaton*, 48 Wn. App. 806, 740 P.2d 907 (1987). The *Eaton* court, citing RCW 1.16.080, read into a statute specific authority for an agency to take action, and noted that RCW 1.16.080 included 'public or private corporations' in its definition of 'person.' *Id.* at 811. This Court reversed, explaining that "[t]he Legislature could have granted . . . this authority, but it did not." *In re Eaton*, 110 Wn.2d 982, 898-99, 757 P.2d 961 (1988).

The Court of Appeals' decision is only supportable if the Eighteenth Legislature intended that the term "corporation" within the statute means "private corporation," but that "person" means "public corporation," and that this should be understood as implied, rather than expressly stated. There is insufficient basis in the text of the statute and in contemporaneous legislative enactments to support this conclusion, and KPUD therefore requests that this Court grant the matter further review.

E. The Decision Of The Court Of Appeals Could Only Be Reached By Disregarding, Or Contradicting Settled Canons Of Construction.

Where a statute contains multiple provisions, the court should interpret the statute so as to assign meaning to each provision. *State v. Merritt*, 91 Wn. App. 969, 973, 961 P.2d 958 (1998). Statutes relating to the same subject matter should be construed together. *See Jongeward*, 174 Wn.2d at 593 (citation omitted). Under the principle of *noscitur a sociis*, "a single word in a statute should not be read in isolation." *Jongeward* at 601 (citation omitted). Instead, "the meaning of words may be indicated or controlled by those with which they are associated." *Id.* (quotation omitted). "Further, a court must not interpret a statute in any way that renders any portion meaningless or superfluous." *Id.* at 602 (citation omitted). The Legislature is presumed not to include unnecessary language when it enacts legislation. *See Davis v. State ex rel. Dep't of Licensing*,

137 Wn.2d 957, 969, 977 P.2d 554 (1999); *Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 202, 95 P.3d 337 (2004) (no portion of a statute shall be rendered meaningless or superfluous through interpretation).

Throughout RCW 76.04, the Legislature employed different terms and phrases to convey different meanings. Where criminal penalties are imposed, the Legislature only used the term "person." *See* RCW 76.04.075. Similarly, where the Legislature intended a statute to apply to both public corporations and private corporations, it used the phrase: "Any person, firm, or corporation, public or private . . . ." RCW 6.04.475.

Under the applicable canons of construction, different terms must be given different effect. Therefore, the phrase "person, firm, or corporation, public or private" must be interpreted as being distinct from the phrase "person, firm, or corporation." The Legislature's explicit inclusion of public corporations in RCW 76.04.475 indicates that the use of the different phrase "person, firm, or corporation" in RCW 76.04.495 does not include public corporations.

The Legislature's specific exclusion of public entities from the lien mechanism in RCW 76.04.610[6] further indicates its intent not to include them within the categories of liable parties under RCW 76.04.495.

[6] RCW 76.04.610 concerns assessments on owners of forest lands for costs of fire protection.

RCW 76.04.610 (7) and (8), discuss "nonfederal public bodies." Demonstrating the Legislature's awareness of existing law and that no liens may be had against public property, RCW 76.04.610 (7) and (8) provide that "[u]npaid assessments are not a lien against the nonfederal publicly owned land[,]" and that "[a] public body . . . is liable for the costs of suppression incurred by the department and is not entitled to reimbursement costs[.]" The Legislature's exclusion of public entities from RCW 76.04.610 is further evidence that the phrase "person, firm, or corporation" in RCW 76.04.495 (1) and (2) should not be interpreted to include governmental entities, as the Legislature declined to include within RCW 76.04.495 a similar statutory exception.[7]

The Legislature has, on several occasions, revisited the language of RCW 76.04.495, and did not modify the phrase "person, firm, or corporation." *See* Laws of 1986, Chapter 100 § 33; Laws of 1993, Chapter 196 § 2. The Legislature has also subsequently enacted and modified RCW 76.04.475 and RCW 76.04.610, which do specifically contemplate municipal corporations and governmental entities. Furthermore, RCW 76.04.760, enacted in 2014, created a new cause of

[7] RCW 76.04.610 was first enacted in 1917, and the statute has been revised by the Legislature at least twelve times since its enactment. In 1977, the statute was revised to include language within subsections (7) and (8) concerning liens. Demonstrating the Legislature's awareness that liens may not be placed upon public property, the Legislature revised RCW 76.04.610 in 1977 to exclude public entities and public property from the lien enforcement mechanism. Laws of 1977, Chapter 102 § 1.

action for the benefit of owners of forested lands, and imposes liability upon "a person relating to the start or spread of the fire." The statute specially defines "person" as including:

> An individual; a corporation; a public or private entity or organization; a local, state, or federal government or governmental entity; any business organization, including corporations and partnerships; or a group of two or more individuals acting with a common purpose.

RCW 76.04.760(5)(d).

As with the specific inclusion of public entities in RCW 76.04.475 and RCW 76.04.610, the Legislature's employment of a special definition of "person" in RCW 76.04.760, which includes governmental entities, indicates the word does not otherwise have that meaning elsewhere, such as in RCW 76.04.495.

The Court of Appeals' conclusion to the contrary is inconsistent with settled principles of statutory construction, and consequently KPUD requests that the Court grant its Petition.

F. The Word "Any" Modifies The Number, Not The Meaning, Of A Statutory Term Or Phrase.

"Any" is "one or more indiscriminately from all those of a kind." Webster's Third New International Dictionary (Unabridged) 1976. The use of "any" as a modifier of a term in a statute generally is treated as meaning "every" or "all." *See State v. Tili*, 139 Wn.2d 107, 115, 985 P.2d

365 (1999). However, use of the term "any" does not expand the meaning of a statutory term; rather it refers to every instance of the thing already contained within the statutory term. *Cf. Caritas Services v. DSHS*, 123 Wn.2d 391, 408, 869 P.2d 28 (1994).

Here, the Court of Appeals has held that the placement of "any" before the phrase "person, firm, or corporation" expands the meaning of the phrase to include governmental entities. Yet, "any" refers to the instances of a thing within a category, rather than providing the meaning of the category itself. (*E.g.*, the phrase "Any X" does not mean "X=Y").

The Court of Appeals was therefore in error relying upon the placement of the word "any" in the statute as a basis for including governmental entities within the phrase "person, firm, or corporation."

VI. CONCLUSION

Under a plain meaning analysis, RCW 76.04.495 concerns recovery of suppression costs by governmental entities from private persons and businesses. DNR argued, and the Court of Appeals agreed, that the phrase "person, firm, or corporation" in the statute should also include governmental entities, for public policy reasons.

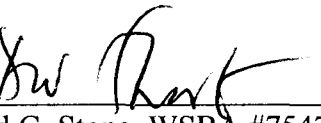
However, the question of whether the statute should include a certain category of entities is a legislative one. Statutes, particularly those in derogation of the common law, must be interpreted as written, and the

onus is on the Legislature, not the Judiciary, to correct perceived statutory problems. As written, the phrase "person, firm, or corporation" in this statute does not include governmental entities, and settled Washington law concerning statutory interpretation did not permit the Court of Appeals to reach the contrary conclusion.

Pursuant to RAP 13.4(b)(1) and RAP 13.4(b)(4), KPUD requests that the Court accept its Petition, and grant review of the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 28th day of May, 2015.

PAINE HAMBLEN LLP

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

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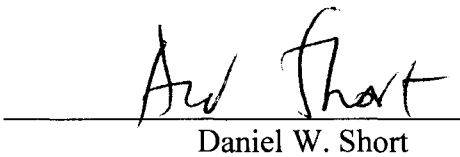

Daniel W. Short

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CASE NO. _____

Court of Appeals No. 318532-III

IN THE SUPREME COURT

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PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation,

Petitioner,

v.

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APPENDIX TO PETITION FOR REVIEW

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APRIL 30, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,	)	No. 31853-2-III
Respondent,	)	
v.	)	
PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation,	)	PUBLISHED OPINION
Petitioner.	)	

SIDDOWAY, C.J. — We granted discretionary review of an order certified by the Superior Court for Klickitat County as warranting immediate review. At issue is whether the Department of Natural Resources has statutory authority to pursue a fire suppression cost recovery claim against a public utility district (PUD) under RCW 76.04.495. Specifically in dispute is whether a municipal corporation, such as a PUD, is a "person" (or alternatively a "corporation") within the meaning of the fire cost recovery statute.

The superior court denied the Public Utility District No. 1 of Klickitat County's motion to dismiss the department's cost recovery claim but certified pursuant to RAP 2.3(b)(4) that "[a]n immediate appeal . . . may materially advance the ultimate termination of this litigation." Clerk's Papers (CP) at 78.

We hold that a municipal corporation is a "person" and a "corporation" within the plain meaning of chapter 76.04 RCW and is subject to a civil action to recover fire suppression costs. On that basis we affirm and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

In August 2010, a forest fire near Lyle, Washington burned more than 2,100 acres after a tree fell onto a power line owned and operated by the Public Utility District No. 1 of Klickitat County. The Department of Natural Resources incurred over $1.6 million in costs suppressing the fire. Based on its investigation, the department concluded that the fire was caused by the PUD's negligence in failing to remove the tree, which posed a foreseeable hazard to its electrical lines.

The department commenced this action against the PUD to recover the fire suppression costs under RCW 76.04.495, a provision of the Forest Protection Act, chapter 76.04 RCW (hereafter sometimes "the Act"), which gives the State the right to recover the costs of suppressing fires negligently started by "any person, firm, or corporation." The PUD moved to dismiss the department's complaint for failure to state a claim upon which relief may be granted, arguing that (1) municipal corporations are not

among the entities identified in RCW 76.04.495 from whom the department can recover fire suppression costs and (2) "the money judgment [the department] seeks as against another taxpayer funded entity of this [s]tate is contrary to Washington law and public policy." CP at 25. The trial court denied the motion to dismiss but certified this controlling question of law as one as to which there is substantial ground for difference of opinion:

> Whether Plaintiff State of Washington Department of Natural Resources has the statutory authority to proceed with a fire suppression cost recovery claim against Defendant Public Utility District No.1 of Klickitat County under RCW 76.04.495.

CP at 78. We granted discretionary review.

ANALYSIS

The Forest Protection Act was enacted in 1923 and seeks to protect public and private forest lands in the state from the devastation caused by forest fires. It empowers the department to take charge of and direct the work of suppressing forest fires. RCW 76.04.015(3)(b). At issue in this case is the scope of the provision of the Act authorizing the department to recover fire suppression costs from any person, firm, or corporation that is negligently responsible for the start or spread of a fire.

Whether the trial court properly denied the PUD's motion to dismiss is a question of law that we review de novo. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). The meaning of a statute, on which the court's decision

turned, is likewise a legal question reviewed de novo. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).

A court's fundamental objective in interpreting a statute is to ascertain and carry out the legislature's intent. *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004). If the statute's meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The plain meaning of a statute is not gleaned solely from the words of the provision being scrutinized, but is determined from "all that the Legislature has said in the . . . related statutes which disclose legislative intent about the provision in question." *State v. Costich*, 152 Wn.2d 463, 471, 98 P.3d 795 (2004) (quoting *Campbell & Gwinn*, 146 Wn.2d at 11). To determine a statute's plain meaning, courts look to "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009).

The PUD's briefing on appeal relies on several canons of construction that it contends support ascribing a narrow meaning to "person" as used in RCW 76.04.495. But it is only if a statute remains ambiguous after a plain meaning analysis that we resort to external sources or interpretive aids, such as canons of construction and case law.

Jongeward v. BNSF Ry. Co., 174 Wn.2d 586, 600, 278 P.3d 157 (2012). We are able to resolve the appeal based on the plain meaning of the statute.

History of relevant legislation

The legislature authorized municipalities to acquire and operate public utilities, including electrical utilities, in 1909. LAWS OF 1909, ch. 150 ("An Act authorizing cities and towns to construct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate certain public utilities.").[1]

The Forest Protection Act, including the original version of the fire cost recovery provision, was enacted over a decade later in 1923. It provided that:

> Any *person, firm or corporation* negligently responsible for the starting or existence of a fire which spreads on forest land shall be liable for any expense incurred by the state, a municipality or forest protective association, in fighting such fire provided that such expense was . . . authorized by the state.

LAWS OF 1923, ch. 184, § 11 (emphasis added).

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[1] Section 1 of the 1909 law delegated to "any incorporated city or town within the state" the power to

> construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the purpose of furnishing such city or town and the inhabitants thereof, and any other persons, with gas, electricity and other means of power and facilities for lighting, heating, fuel and power purposes, public and private, with full authority to regulate and control the use, distribution and price thereof.

LAWS OF 1909, ch. 150, § 1 at 580.

A statutory definition of "person" for purposes of construing Washington statutes predated statehood. *See* LAWS OF WASH. TERR. § 134 at 99 (1854). By the time the Forest Protection Act was enacted in 1923, the definition of "person" existed in a form adopted in 1891, when it was included in "An Act concerning the construction of statutes," which provided in relevant part:

> *Be it enacted by the Legislature of the State of Washington*:
> SECTION 1. The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state: The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. *The term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual.*

LAWS OF 1891, ch. 23, § 1 (emphasis added). The definition of "person" has remained unchanged since. It is presently codified at RCW 1.16.080(1).

In 1931, the legislature authorized the establishment of public utility districts. LAWS OF 1931, ch. 1, § 2. The PUD makes a passing suggestion in its argument on appeal that in light of this timing, the legislature adopting the Fire Protection Act could not have contemplated PUDs. But the legislature had been aware of electrical utilities operated by municipal corporations, so the 1931 PUD legislation is not consequential. The 1931 legislation recognized the longstanding existence of public utilities operated by municipalities. *See* LAWS OF 1931, ch. 1, § 12 (providing that "[n]o public utility district

created hereunder shall include therein any municipal corporation . . . where such municipal corporation already owns or operates all the utilities herein authorized.")

The present version of the fire suppression cost recovery statute, which was in effect at the time of the department's suppression of the Lyle fire leading to the lawsuit below, was last amended in 1993. Reformatted for clarity, it provides in relevant part:

> (1) Any person, firm, or corporation:
>
> (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land . . .
>
> [s]hall be liable for any reasonable expenses made necessary by . . . this subsection. The state . . . may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. . . .
>
> (2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the firefighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington.

RCW 76.04.495. "Department" as used in the Act "means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW." RCW

76.04.005(3). Chapter 76.04 RCW does not include definitions of "person," "firm," or "corporation" as used in the chapter.[2]

I. Plain meaning analysis

A. RCW 1.16.080(1) is properly considered

Since chapter 76.04 RCW does not include a definition of "person," the department looks to RCW 1.16.080(1), the current codification of Laws OF 1891, ch. 23, § 1. As previously observed, the introductory phrase of that legislation provides, "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state." RCW 1.16.080(1) states:

> The term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual.

In *In re Brazier Forest Prods., Inc.*, 106 Wn.2d 588, 595, 724 P.2d 970 (1986), our Supreme Court relied on the general definition of "person" in RCW 1.16.080(1) as "strong support" for ascribing that meaning to the "persons" who could claim liens under RCW 60.24.020, because "person" was not otherwise defined in Title 60 RCW. In *State*

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[2] "Person" and other terms are defined in RCW 76.04.760, enacted in 2014, which creates an exclusive civil cause of action by which an owner of forested lands may sue "a person" for property damage resulting from a fire negligently started or negligently allowed to spread. But the definitions appearing in RCW 76.04.760 "only apply throughout this section . . . unless the context clearly requires otherwise." RCW 76.04.760(5).

v. Jeffries, 42 Wn. App. 142, 145-46, 709 P.2d 819 (1985), this court concluded that under settled rules of statutory construction, a court should consider the definition provided by RCW 1.16.080(1), which "defines 'person' for purposes of the entire code," as a legislative enactment relating to the same subject matter area as statutes using the undefined term "person"—as long as the statutes are not in actual conflict. Where the legislature does not provide for another definition of "person," RCW 1.16.080(1) is, by its plain terms, germane to statutory construction.

Yet because RCW 1.16.080 states that "person" *may* be construed to include the listed entities as well as an individual, our Supreme Court has recognized that it "only allows, but does not require such a construction." *Brazier Forest Prods.*, 106 Wn.2d at 595. As the Supreme Court further explained in *Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 474, 238 P.3d 1107 (2010), the "nature and purpose" of specific provisions of the RCW may require a different interpretation of "person" than the permissive interpretation provided by RCW 1.16.080(1). Such was the result in *Segaline*, because the purpose of the statute being applied in that case—to protect the exercise of individuals' constitutional free speech rights—had no application to the state agency that was asking the court to treat it as a "person" having rights under the statute. The Court concluded that it made "little sense" to interpret "person" to include government agencies, who "do not have free speech rights." *Id.* at 474.

B. "Any . . . corporation"

The PUD points to the fact that the specific provision at issue does not use the stand-alone term "person," but refers instead to "any person, firm or corporation." From that, it argues that "person" cannot be plainly read to have the meaning provided by RCW 1.16.080 without rendering "firm" and "corporation" superfluous. While the PUD's point is well-taken as to RCW 76.04.495, it ignores the fact that many other provisions of the Act *do* use the stand-alone term "person." Among them are provisions that require "every person" who receives notice of fire prevention and fire suppression preparedness violations to cease operations, RCW 76.04.415; that provide that "[n]o person operating a railroad" may permit its employees to deposit fire or live coals on the right-of-way proximate to forest material, RCW 76.04.435; and that provide that it is unlawful for "any person" to negligently allow fire originating on its own property to spread to the property of another, RCW 76.04.730.[3] The definition of "forest landowner" includes "any person" in possession of any public or private forest land. RCW 76.04.005(10).

The decision in *Segaline* pointed out that the meaning of "person" varies within the RCW. *Segaline*, 169 Wn.2d at 473. The PUD's argument highlights the fact that the

[3] Other provisions require "[a]ny person" engaged in activity on forest lands to immediately report fires on such lands, RCW 76.04.445(1); require "a person" to have a valid burning permit to burn certain flammable materials on forest lands, RCW 76.04.205; and provide that "no person" may dump hazardous quantities of mill wastes or forest debris on forest lands without a permit, RCW 76.04.235.

meaning of "person" may vary even within a chapter of the RCW. But the frequent stand-alone use of "person" in the Act makes the definition provided by RCW 1.16.080(1) a permissible, if not presumptive definition in many provisions. And as the department points out, the PUD surely falls within the category of "any . . . corporation" in those provisions, like the fire suppression cost recovery statute, that speak of "any person, firm, or corporation."

This is especially clear because other provisions of the Act, where appropriate, speak of private or public corporations, demonstrating that the legislature had both private and public corporations in mind. *See* RCW 76.04.105, .115 (dealing with DNR's authority to contract with "private corporations" for the protection and development of forest lands); RCW 76.04.475 (authorizing any corporation, "public or private" to obtain reimbursement for fire suppression costs subject to certain conditions). The word "any" is unambiguous. In *Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 145, 247 P.2d 787 (1952), our Supreme Court, in determining the meaning of "any lottery," stated that "the word 'any,' given its usual meaning, is all embracing as far as different types and kinds of lottery schemes and devices are concerned." *See also Cerrillo v. Esparza*, 158 Wn.2d 194, 203, 142 P.3d 155 ("[C]ourts have consistently interpreted the word 'any' to mean 'every' and 'all,'" (quoting *Stahl v. Delicor of Puget Sound, Inc.*, 148 Wn.2d 876, 884-85, 64 P.3d 10 (2003))).

Having established strong support for a permissively broad reading of "person" in chapter 76.04 RCW and that references to "any person, firm, or corporation" plainly include municipal corporations, we turn to whether there is anything in the "nature and purpose" of the Act that requires the exclusion of municipal corporations from the meaning of those terms.

C. Consideration of provisions of the Act and its purpose

The primary purpose of the Act is to protect, through prevention and suppression, private and public forest lands from damage caused by uncontrolled fires. *See* chapter 76.04 RCW; *e.g.*, RCW 76.04.015-.035, .075-.167. To that end, it commands or authorizes the department (among other duties and prerogatives) to enforce requirements that persons obtain burn permits before burning flammable or waste material on forest lands, RCW 76.04.205; to enforce a requirement that persons obtain a permit before dumping mill waste or forest debris in hazardous quantities, RCW 76.04.235; to require that owners of forest land provide adequate protection against the spread of fire during high danger periods, RCW 76.04.600; to enforce the duty of owners of land and persons responsible abate, isolate, or reduce fire hazards that they create, RCW 76.04.660; and to require that persons, firms or corporations reimburse the State for fire suppression costs arising from their negligence, RCW 76.04.495.

The Act's application to utilities, private or public, is explicit in its provision dealing with the department's duty to investigate the origin and cause of all forest fires

"to determine whether either a criminal act or negligence . . . caused the starting, spreading, or existence of the fire." RCW 76.04.015. The provision contemplates that the operation of utilities will come within the scope of such investigations and makes no distinction between private and public utilities. It provides that "in conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence." RCW 76.04.015(2)(c)(i). While it generally authorizes the department to take possession or control of relevant evidence that it finds in plain view, *see id.*, it makes special provision for property used in the operation of a business or utility. With respect to a utility, it provides that absent a court order, the department may not take possession or control of a utility's property over objection if taking possession and control would "materially interfere with the . . . provision of electric utility service." RCW 76.04.015(2)(c)(ii). It provides that "[o]nly personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility." RCW 76.04.015(2)(c)(iv).

We may take judicial notice of the fact that downed power lines and other operational mishaps experienced by electric utilities can trigger wildfires, whether or not negligence is involved. A legislative fact of this sort is properly considered "as part of the statute's context because presumably the legislature also was familiar with them when it passed the statute." *Campbell & Gwinn*, 146 Wn.2d at 11 (quoting 2A NORMAN J.

SINGER, STATUTES AND STATUTORY CONSTRUCTION § 48A:16, at 809-10 (6th ed. 2000)). The Act's contemplation that the operation of electric utilities will fall within the scope of department investigations reflects this legislative fact.

Public corporations, like private corporations, have the capacity to negligently start forest fires. The manifest purpose of the Act can be achieved only if the department's authority extends to the activities of public corporations, including to regulate threats they pose and to recover the cost of suppressing fires for which they may be responsible. The PUD offers no explanation *why* the legislature would exclude public corporations from the operation of the Act. Given the manifest purpose of the Act, there is no textual basis for concluding that its references to "person" and "any . . . corporation" do not include public corporations such as PUDs. In this respect, the Act is unambiguous.

The PUD nonetheless argues that the inclusion of a lien as an enforcement mechanism in RCW 76.04.495(2) compels the conclusion that the Act cannot apply to public corporations. We turn to that argument.

D. Enforcement by lien

The PUD offers two syllogisms as its principal argument against the application of RCW 76.04.495 to public corporations:

First,

- "The statute provides for a cause of action by DNR for recovery of fire suppression costs against a negligent 'person, firm or corporation,'"
- "The statute provides that the enforcement mechanism is DNR 'shall have a lien' on the property of the "person, firm, or corporation,'"
- "Therefore, a 'person, firm, or corporation' must be an entity which is legally capable of having a lien placed on its property."

Second,

- "The property of municipal corporations, such as [the PUD], is public property,"
- "It is well-settled Washington law that no lien may be placed upon public property,"
- "Therefore, a 'person, firm, or corporation' cannot include a municipal corporation, such as [the] PUD."

See Appellant's Reply Br. at 1-2.

The second premise of the PUD's first syllogism is false. RCW 76.04.495 does not provide that "the" enforcement mechanism for fire suppression cost recovery is a lien, and it does not provide that the department "shall" have a lien automatically, as implied, but only conditionally.[4]

[4] The second premise of the second syllogism is couched in overly-strong terms, but need not be addressed further because we agree that the lien provided by RCW 76.04.495(2) could not be obtained against the PUD. Washington cases have clearly and consistently followed the general rule that mechanics' and materialmen's liens cannot be placed on public property. The basis for the rule is common law, not constitutional, however. It is within the legislature's power to authorize a lien against public property. But we would not infer a legislative intent to do so absent clear and unmistakable language.

The operative statutory language creating the department's right to recover fire costs from a negligent party appears in subsection (1) of RCW 76.04.495:

> Any person, firm, or corporation: . . . [w]hose negligence is responsible for the starting or existence of a fire which spreads on forest land . . . shall be liable for any reasonable expenses made necessary by [a type of fault identified by] this subsection. The state . . . may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department.

Because the superior court has jurisdiction in all cases at law in which the demand amounts to $300, the department properly filed a complaint seeking damages under RCW 76.04.495 in the Klickitat County Superior Court. RCW 2.08.010. It was not required to seek a lien.

Subsection (2) of the statute, dealing with the right to pursue a lien, is conditional, not absolute. It provides that the department *shall* have a lien *by* following a prescribed procedure. As the department points out, the short timeline for applying for a lien (90 days after expenses are incurred) and the mandated documentation present "impractical requirements for large fires," with the result that even when dealing with private parties, the department prefers to pursue direct payment from the liable party and its insurer. Br. of Resp't at 15. The lien is, as the department argues, an enforcement option.

As further support for its argument, the PUD cites Washington cases holding that public property has never been subject to mechanics' or materialmen's liens under general mechanics' and materialmen's lien statutes. But while the PUD relies on those

cases, it ignores their common theme: namely, that when a claimant is unable to file a lien against public property, the legislature has ordinarily provided another remedy.

In *Hall & Olswang v. Aetna Cas. & Sur. Co.*, 161 Wash. 38, 47, 296 P. 162 (1931), the court discussed the statutory requirement that a general contractor post a performance bond on public projects from which laborers, mechanics and materialmen had a right of action, stating, "It seems plain that [the performance bond provisions] were enacted and have remained the law, in recognition of the law that public property has never been subject to mechanics' or materialmen's liens under our general mechanics' and materialmen's lien statutes." In *Maxon v. School Dist. No. 34 of Spokane County*, 5 Wash. 142, 145-46, 31 P. 462 (1892), the court similarly observed that "the general idea" of an 1888 act requiring local governments to obtain a "good and sufficient bond" from their contractors was "to provide for laborers and material men some safe means of obtaining their just dues as against a contractor on a public work where they could in the nature of things have no lien." More recently, in *3A Industries, Inc. v. Turner Constr. Co.*, 71 Wn. App. 407, 411, 869 P.2d 65 (1993), the court observed that Washington statutes require contractors to obtain bonds on public works projects "for the protection of laborers and materialmen because mechanics' liens are unavailable on such projects." As pointed out by McQuillin, "Persons furnishing labor and material used in the construction of a public improvement are generally given a lien on the money due the contractor from the municipality under the contract for that particular improvement."

EUGENE MCQUILLIN, 13 MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 37:192 at 598 (3d ed. 2008). In Washington, chapter 60.28 RCW provides for such liens.

The lien cases, then, are in accord with our conclusion that the Act's fire suppression cost recovery provision provides dual remedies: a suit for damages or a lien. And these dual remedies parallel dual remedies available under a different provision of the Act: RCW 76.04.610(1), which authorizes the department to impose monetary assessments on owners of forest land to whom the department provides protection. Amounts owed by private owners are reported to the county assessor in which the property is located, become a lien in the same manner as general state and county taxes on the same property, and can be collected through foreclosure, just as taxes can. RCW 76.04.610(2)(b)(4) and (5). Assessment amounts owed by public entities, by contrast, "are not a lien against the . . . land but shall constitute a debt by the nonfederal public body." RCW 76.04.610(2)(b)(7). Just as under RCW 76.04.495(1) and (2), then, provision is made by which liabilities of both private and public entities may be collected by the department.

Conclusion

Because the PUD is a "person, firm or corporation" within the plain meaning of RCW 76.04.495, we need not reach its arguments based on canons of statutory

construction. The superior court properly denied the motion to dismiss. We affirm and remand for further proceedings.

Siddoway, C.J.

WE CONCUR:

Fearing, J.

Lawrence-Berrey, J.

76.04.055. Service of notices.

Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

76.04.065. Arrests without warrants.

Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

76.04.075. Rules — Penalty.

Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

76.04.085. Penalty for violations.

Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

76.04.095. Cooperative protection.

When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

JUDICIAL DECISIONS

ANALYSIS

Affirmative obligation.

—Provide protection.
An agreement under this section is the basis of an affirmative obligation on the party to provide fire protection to use care. Arnhold v. United States, 284 F.2d 326 (9th Cir. 1960), cert. denied, 368 U.S. 876, 82 S. Ct. 122, 7 L. Ed. 2d 76 (1961).

Delegation of duties.
The duty of an occupier of land to control fire thereon is non-delegable in the sense that if an agreement is made with another to furnish fire protection, the occupier is liable for damages negligently caused by the delegatee. Arnhold v. United States, 284 F.2d 326 (9th Cir. 1960), cert. denied, 368 U.S. 876, 82 S. Ct. 122, 7 L. Ed. 2d 76 (1961).

Liability.

—Government.
If the United States undertakes to provide fire protection, it is liable for losses incurred by fire to the same extent as would be a private person in its position. Arnhold v. United States, 284 F.2d 326 (9th Cir. 1960), cert. denied, 368 U.S. 876, 82 S. Ct. 122, 7 L. Ed. 2d 76 (1961).

control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

76.04.475. Reimbursement for costs of suppression action.

Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

76.04.486. Escaped slash burns — Obligations.

(1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forest lands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forest lands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

76.04.495. Negligent starting of fires or allowance of extreme fire hazard or debris — Liability — Recovery of reasonable expenses — Lien.

(1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the firefighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1993 c 196 § 2; 1986 c 100 § 33.]

JUDICIAL DECISIONS

ANALYSIS

Jury trial
Reasonable expenses

Jury trial.
Action by department of natural resources (DNR) against logging company for expenses incurred by DNR in fighting a fire allegedly caused by the company's negligence, was primarily legal rather than equitable in nature, thus the parties had a right to a jury trial. Department of Natural Resources v. Littlejohn Logging, Inc., 60 Wn. App. 671, 806 P.2d 779 (1991).

Reasonable expenses.
This section imposes liability for reasonable expenses only, thus a negligent party may question the reasonableness of the expenses incurred by the state in suppressing a forest fire; reasonableness is to be judged as of the time of the fire, not with hindsight as of the time of trial. Department of Natural Resources v. Littlejohn Logging, Inc., 60 Wn. App. 671, 806 P.2d 779 (1991).

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600. Owners to protect forests.

Every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

JUDICIAL DECISIONS

ANALYSIS

Compliance
Owners
—State
Requirements
—Approval of plans
Review
—Forest land

Compliance.
Where approval of state forest board under this

section, neither asked nor obtained for certain lands, it is duty of the supervisor to provide the protection. State ex rel. Showalter v. Goodyear, 30 Wn.2d 834, 194 P.2d 389 (1948).

Owners.

—State.
The Department of Natural Resources (DNR) of the State of Washington was liable for damages to plaintiff's property from a fire which began on DNR land and which DNR negligently failed to contain; the public duty doctrine did not negate the jury's unchallenged finding that DNR was negligent. Oberg v. Department of Natural Resources, 114 Wn.2d 278, 787 P.2d 918 (1990).

Requirements.

—Approval of plans.
This section requires owner's protection plan to receive approval of state forest board. State ex rel. Showalter v. Goodyear, 30 Wn.2d 834, 194 P.2d 389 (1948).

Review.

—Forest land.
Director's determination of forest land within meaning of this section and RCW 76.04.360 not reviewable by courts where not arbitrary or capricious. State ex rel. Showalter v. Goodyear, 30 Wn.2d 834, 194 P.2d 389 (1948).

76.04.610. Forest fire protection assessment.

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

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

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

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

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

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

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

Year	Number of Parcels
2002	10 or more parcels
2003	8 or more parcels
2004 and thereafter	6 or more parcels

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

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

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

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

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

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [2007 c 110 § 1; 2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

Effective date — 1993 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take

effect immediately [April 15, 1993]." [1993 c 36 § 3.]

Effect of Amendments.
2007 c 110 § 1, effective July 22, 2007, made designation changes in (1) and increased the fees throughout (1)(a) and (2).

JUDICIAL DECISIONS

ANALYSIS

Constitutionality
—Taxes
Applicability
Liability
—Governmental owners

Constitutionality.

—Taxes.
Forest patrolling being within police power, sums exacted from owners for this purpose were not taxes or state funds required to be paid into state treasury under Wa. Const., Art. VII, § 6 and Art. XI, § 15. State ex rel. Sherman v. Pape, 103 Wash. 319, 174 P. 468 (1918).

Applicability.
Where approval of state forest board under RCW 76.04.600 was neither asked nor obtained for certain lands, it is duty of the supervisor to provide the protection and make the assessment provided for under this section. State ex rel. Showalter v. Goodyear, 30 Wn.2d 834, 194 P.2d 389 (1948).

Liability.

—Governmental owners.
The Department of Natural Resources (DNR) of the State of Washington was liable for damages to plaintiff's property from a fire which began on DNR land and which DNR negligently failed to contain; the public duty doctrine did not negate the jury's unchallenged finding that DNR was negligent. Oberg v. Department of Natural Resources, 114 Wn.2d 278, 787 P.2d 918 (1990).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Collection of assessments
—Sale of land
Double assessments
—Unlawful
Municipal corporations
Payment of assessments
Property tax rebates
Time of payment

Collection of assessments.

—Sale of land.
Fire patrol assessments on land resold by county for taxes. AGO 1939-40, p. 311 (1940).

Double assessments.

—Unlawful.
Unlawfulness of assessing same property for both forest patrol and fire protection district. AGO 1953-55 No. 9; 1953-1955 Op. Atty Gen. Wash. No. 9 (1953).

Municipal corporations.
Fire patrol assessments against forest lands owned by municipal corporation. AGO 1951-53 No. 471; 1951-1953 Op. Atty Gen. Wash. No. 471 (1953).

Payment of assessments.
Payment of fire patrol assessments without payment of general property taxes on land. AGO 1933-34, p. 106 (1933).

Property tax rebates.
In applicability of property tax rebate to forest patrol assessments. AGO 1933-34, p. 24 (1933).

Time of payment.
Time of payment of forest fire assessments. AGO 1917-18, p. 210 (1917), AGO 1925-26, p. 143 (1926).

76.04.620. State funds — Loans — Recovery of funds from the landowner contingency forest fire suppression account.

Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated

lands owned or administered by it, is liable for the costs of suppression incurred by the department or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

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

HISTORY:
2012 2nd sp.s. c 7 § 922; 2007 c 110 § 1; 2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 382 § 1; 1988 c 273 § 3; 1986 c 100 § 35.

Effective date — 2012 2nd sp.s. c 7:
See note following RCW 2.68.020.

Effective date — 1993 c 36:
"This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 15, 1993]." [1993 c 36 § 3.]

Effect of Amendments.
2012 2nd sp.s. c 7 § 922, effective May 2, 2012, added the last sentence of (7).

FIRE REGULATION

76.04.760. Civil actions — Forested lands — Fire damage.

(1) The owner of public or private forested lands may bring a civil action in superior court for property damage to public or private forested lands, including real and personal property on those lands, when the damage results from a fire that started on or spread from public or private forested lands.

(2) Liability under this section attaches to the extent that evidence demonstrates that:

(a) An action or inaction by a person relating to the start or spread of the fire from public or private forested lands constituted negligence or a higher degree of fault; and

(b) The action or inaction under (a) of this subsection was a proximate cause of the property damage.

(3) Recoverable damages under this section are limited to:

(a) Either: (i) The difference in the fair market value of the damaged property immediately before and after the fire. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW; or (ii) the reasonable cost of restoring the damaged property to the general condition it was in immediately before the fire, to the extent permitted by Washington law;

(b) The reasonable expenses incurred to suppress or extinguish the fire unless otherwise provided for in this chapter;

(c) Any other objectively verifiable monetary loss, that is not duplicative of the recovery specified under (a) or (b) of this subsection including, but not limited to: Out-of-pocket expenses; loss of earnings; loss of use of property; or loss of business or employment opportunities; and

(d) In actions brought by an Indian tribe for recovery of damages from injury to archaeological objects, archaeological sites, or historic archaeological resources, damages as measured in accordance with WAC 25-48-043 as it existed on June 12, 2014.

(4) This section provides the exclusive cause of action for property damage to public or private forested lands, including real and personal property on those lands, resulting from a fire that started on or spread from public or private forested lands.

(5) The definitions in this subsection only apply throughout this section relating to the specification of damages for fire damage to public and private forested lands, unless the

context clearly requires otherwise, and do not apply to and are not intended as a source for interpretation of other sections of this chapter.

(a) "Fair market value" means the amount that a willing buyer would pay to a willing seller for property in an arms-length transaction if both parties were fully informed about all advantages and disadvantages of the property and neither party is acting under a compulsion to sell, as determined by: (i) For real property, a state-certified general real estate appraiser as defined under RCW 18.140.010; and (ii) for personal property, an appraiser qualified to appraise the property based on training and experience. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW.

(b) "Forest tree species" means a tree species that is capable of producing logs, fiber, or other wood materials that are suitable for the production of lumber, sheeting, pulp, firewood, or other forest products.

(c) "Owner of public or private forested lands" means any person in actual control of public or private forested lands, whether the control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on the land in any manner.

(d) "Person" includes: An individual; a corporation; a public or private entity or organization; a local, state, or federal government or governmental entity; any business organization, including corporations and partnerships; or a group of two or more individuals acting with a common purpose.

(e) "Public or private forested lands" means any lands used or biologically capable of being used for growing forest tree species regardless of the existing use of the land, except when the predominant physical use of the land at the time of the fire is not consistent with the growing, conservation, or preservation of forest tree species. Examples of inconsistent uses include, but are not limited to, buildings, airports, parking lots, mining, solid waste disposal, cropfields, orchards, vineyards, pastures, feedlots, communication sites, and home sites that may include up to ten acres. Public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands.

HISTORY:
2014 c 81 § 1.

Authority of chapter — 2014 c 81:
"This act does not: Affect or preclude any action relating to the imposition of criminal or civil penalties as authorized by law; affect or preclude the recovery of fire suppression costs as authorized under chapter 76.04 RCW; affect or preclude an action under RCW 4.24.630 against a person who goes onto the land of another without authorization and wrongfully, intentionally, and unreasonably causes a fire resulting in property damage; affect or preclude an action under chapter 27.44 or 27.53 RCW; or affect the provisions of RCW 76.04.016." [2014 c 81 § 4.]

Application — 2014 c 81:
"This act applies prospectively only and not retroactively. It applies only to causes of action that arise on or after June 12, 2014." [2014 c 81 § 5.]

Editor's Notes.
This section took effect June 12, 2014.

CHAPTER 76.09

FOREST PRACTICES

Section
76.09.020. Definitions.

CHAPTER 87.

[H. B. 126.]

ELECTRIC POWER.

AN ACT relating to and authorizing the sale of electric light, power, current and energy by cities and towns, providing for the payment and collection of an excise tax thereon and referring this Act to the people for their ratification.

Be it enacted by the Legislature of the State of Washington:

Cities and towns, selling.

SECTION 1. Any city or town within the State of Washington now or hereafter owning or operating its own electric plant, shall have the right to sell and dispose of any surplus energy that it may generate to any other city or town or other municipal corporation, governmental agency, firm, person or corporation for use outside the corporate limits of such city or town.

Transmission lines.

SEC. 2. For the purpose of carrying out the provisions of Section 1 hereof, any city or town or other municipal corporation, governmental agency, firm, person or corporation intending to sell or purchase such electric energy may, in the manner provided by law for the construction of electric plants or for the making of additions and betterments thereto or extensions thereof, construct, acquire and maintain all the necessary transmission lines, distribution system and other equipment necessary to conduct such electric energy to its point of consumption and to distribute the same.

Distribution system.

Books of sale.

SEC. 3. Any city or town generating for sale and selling electric light, power, current or energy under the provisions of this act shall keep books of account in such manner and form as may be prescribed by the director of taxation and examination, showing in detail all receipts from sales of electric light, power, current or energy both within and with-

out its corporate limits and shall remit and pay to the state treasurer monthly for state purposes, on or before the tenth day of each calendar month, five per cent (5%) of the gross receipts of all such sales so made during the preceding calendar month, and file with the state treasurer a detailed report verified under oath by the officer of such city or town charged with the duty of collecting such receipts, on a form to be prescribed by the director of taxation and examination, and it shall be the duty of the state treasurer on the next business day after the receipt of any such report and remittance, to transmit the report, accompanied by his duplicate receipt for the remittance, to the department of taxation and examination, and to deposit in the state treasury to the credit of the general fund the moneys on hand at the close of the preceding business day, received from such city or town, after making all corrections and refunding all over-payments, and the director of taxation and examination, shall have access to the books and records of such city or town, for the purpose of determining the amount due and payable to the state and verifying the correctness of the payments made.

Gross receipts tax.

SEC. 4. Any officer of any city or town which shall be liable for the payment of the tax provided for in Section 3 hereof, who shall fail, neglect or refuse to comply with the provisions of this act shall forfeit to the State of Washington the sum of twenty dollars ($20.00) per day for each and every day of such failure, neglect or refusal, which penalty shall be recovered in a civil action to be brought by the attorney general in the name of the State of Washington in the superior court of Thurston county. The attorney general is also authorized to institute other appropriate legal proceedings against any city or town, or the officers thereof, to compel the pay-

Penalty.

ment of said tax, which proceedings may be instituted in the superior court of Thurston county.

If any part unconstitutional.

SEC. 5. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Referendum.

SEC. 6. This act shall be submitted to the people for their ratification at the next general election in accordance with the provisions of Section 1 of Article 11 of the State Constitution, as amended at the general election held in November 1912, and the laws adopted to facilitate the operation thereof.

Passed the House February 16, 1923.

Passed the Senate February 28, 1923.

(Referendum.) Filed without the signature of the Governor.

J. GRANT HINKLE,
Secretary of State.

CHAPTER 88.

[H. B. 27.]

COUNTY GOVERNMENT.

AN ACT providing for the amendment of Section 5 of Article XI of the Constitution of the State of Washington relating to county officers.

Be it enacted by the Legislature of the State of Washington:

Constitutional amendment proposed.

SECTION 1. That at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1924, there shall be submitted to the qualified electors of this state for their adoption and approval or rejection an amendment to Article XI of the Constitution of the State of Washington so that Section 5 of said Article XI when amended shall read as follows:

under, which bond shall be approved by the attorney general.

Amends Rem. Comp. Stat. § 5806-1, 5806-2, 5811-1 and 5813-1; Pierce's Code § 2581-1, 2581-2, 2585-b and 2578-8a.

SEC. 11. That chapter 1, Title XXXVI of Remington's Compiled Statutes of Washington 1922, shall be amended by adding thereto, four new sections to be known as sections 5806-1, 5806-2, 5811-1 and 5813-1.

Person negligently starting, liable for cost of fighting.

Section 5806-1. Any person, firm or corporation negligently responsible for the starting or existence of a fire which spreads on forest land shall be liable for any expense incurred by the state, a municipality or forest protective association, in fighting such fire provided that such expense was, at the time incurred, authorized by the state supervisor of forestry or by one of his duly appointed and acting district or state fire wardens. The agency incurring such expense shall have a lien for the same against any property of said person, firm or corporation liable as above provided by filing a claim of lien naming said person, firm or corporation describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signed by the claimant with post office address. No claim of lien shall be valid unless filed with the county auditor of the county in which the property sought to be charged is located within a period of ninety days after the expenses of the claimant were incurred. The claimant may recover said expenses incurred in a civil action against said person, firm or corporation liable therefor, and shall have in addition the lien remedy above provided. Said lien may be foreclosed in the same manner as a mechanics lien is foreclosed under the statutes of the state of Washington.

Action to recover.

Permitting spreading, penalty.

Section 5806-2. Any person who shall negligently suffer fire originating on his own property to

spread to the property of another shall be deemed guilty of a misdemeanor.

Rules and regulations, violation, penalty.

Section 5811-1. Any person who shall wilfully violate any of the orders, rules or regulations made by the director of the department of conservation and development of the state of Washington in accordance with the authority granted by the provisions of Title XXXVI of Remington's Compiled Statutes of Washington 1922, for the protection of forests from fires, shall be guilty of a misdemeanor.

See Rem. Comp. Stat. § 5781 to 5828; Pierce's Code § 2558 to 2585-a.

Cutting or destroying trees, without consent of owner, penalty.

Section 5813-1. Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine equivalent to one dollar for every tree so cut down, topped, or destroyed.

Passed the Senate March 8, 1923.

Passed the House March 2, 1923.

Approved by the Governor with the exception of Sections 1 and 4, which are vetoed, March 19, 1923.

CHAPTER 185.

223 P3.

[S. B. 271.]

PRIMARY AND SECONDARY STATE HIGHWAYS.

AN ACT relating to, classifying, naming and fixing the routes of certain state highways, amending Section 6796, and repealing Sections 6791, 6792, 6793, 6794, 6795, 6797, 6798, 6799, 6800, 6801, 6802, 6803, 6804, 6805, 6806, 6808, 6809, 6811, 6812, 6813 and 6816 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

State road No. 1, or Pacific Highway.

SECTION 1. A primary state highway, to be known as State Road No. 1 or the Pacific Highway, is established as follows: Beginning at the international boundary line at Blaine in the County of