

SENATE BILL REPORT

SB 5069

As of February 4, 2009

Title: An act relating to recreational liability on public and private lands.

Brief Description: Regarding recreational liability on public and private lands.

Sponsors: Senator Jacobsen.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/22/09.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Curt Gavigan (786-7437)

Background: Landowner Duty to Invitees Generally. Under Washington tort law, landowners generally owe persons invited to enter their land a duty to use ordinary care to keep that land in a reasonably safe condition. This includes an affirmative duty to inspect the premises and discover dangerous conditions.

Protection Under the Recreational Use Immunity Statute. The Legislature modified this general rule through what is known as the Recreation Use Immunity Statute (statute). The stated purpose of the statute is to encourage landowners, or others in possession and control of land (collectively landowners), to make their land accessible to the public for recreational purposes by limiting their tort liability.

The statute generally provides protection from tort liability for landowners who allow public use of their lands and do not charge a fee. However, landowners may charge an administrative fee of up to \$25 to those cutting, gathering, and removing firewood from their land. Additionally, the following are not considered a fee for purposes of the statute: (1) a license or permit issued under the the State Parks and Recreation Commission or the Fish and Wildlife statutes; and (2) a daily charge not to exceed \$20 for access to certain public off-road vehicle facilities.

Limitations on the Protection Offered by the Statute. The liability protection offered under the statute is not absolute. The statute does not protect landowners from certain dangerous conditions for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Limited liability protection under the statute is expanded to include landowners who:

- receive funds and allow recreational use pursuant to a written agreement with a federal, state, or local government; or
- charge for recreational use so long as revenues are used solely to offset reasonable maintenance and land management expenses associated with allowing such use.

The statute is expanded to clarify that landowners who exercise the authority provided in the statute to charge an administrative fee of up to \$25 for the cutting, gathering, and removal of firewood receive limited liability protection.

Language within the statute is reorganized.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Proposed First Substitute): The substitute bill: (1) removes language allowing landowners to charge for recreational use to offset maintenance and land management expenses and receive limited-liability protection; and (2) increases the maximum amount that certain public off-road vehicle facilities may charge while still receiving limited liability protection from \$20 to \$50.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The protections offered under this statute encourage landowners to open their lands up for recreation. The reorganization that occurs in this bill provides clarity to readers. Additionally, it adds tools for landowners to receive funds for maintenance costs incurred by allowing recreation. The statute is useful to both public and private landowners. In the case of public ORV parks, more room is needed under the current \$20 limit.

CON: Everything in the bill is acceptable, except the language allowing landowners to impose charges for land management costs and still receive protection under the statute. This could result in those providing commercial recreation receiving this liability protection.

Persons Testifying: PRO: Dolores Noyes, Grays Harbor County; Dave Ware, Paul Dahmer, Department of Fish and Wildlife; Bonnie Bunning, Department of Natural Resources.

CON: John Budlong, Washington State Association for Justice.