

# HOUSE BILL REPORT

## SB 5388

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**As Passed House:**  
April 1, 2011

**Title:** An act relating to the liability of owners of recreational land and water areas.

**Brief Description:** Limiting liability for making certain land and water areas available for recreational use under a hydroelectric license.

**Sponsors:** Senators Parlette, Regala, Holmquist Newbry, Hatfield and Honeyford.

**Brief History:**

**Committee Activity:**

Judiciary: 3/9/11, 3/10/11 [DP].

**Floor Activity:**

Passed House: 4/1/11, 92-0.

**Brief Summary of Bill**

- Limits liability of hydroelectric project owners under the Recreational Use Immunity Statute.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Morgan Powell (786-7119) and Trudes Tango (786-7384).

**Background:**

Hydroelectric projects provide electricity using hydropower. Washington is one of the largest producers of hydropower in the nation. The Federal Energy Regulatory Commission (FERC) is the primary federal agency responsible for issuing licenses for all nonfederal hydroelectric projects within its jurisdiction. The federal Power Act requires evidence of compliance with state and local requirements before issuance of a FERC license. Generally, a FERC license (or an exemption from licensing) must be obtained for any hydropower project within the

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*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.*

FERC's jurisdiction. Some FERC licenses require that hydroelectric project owners release water or flows and make waterways or channels available for a variety of purposes, including recreational uses, such as kayaking, canoeing, and rafting.

#### Recreational Use Immunity Statute.

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. The Legislature modified this general rule through what is known as the Recreational 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 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 liability for injuries caused by "known dangerous artificial latent conditions" for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

#### **Summary of Bill:**

Hydroelectric project owners who release water and make water areas available for specified recreation and viewing opportunities in compliance with a FERC hydroelectric license do not create a known dangerous artificial latent condition that would eliminate the limited liability protection under the Statute.

Hydroelectric project owners have limited liability protection under the Statute to allow free recreation on their lands and water areas. These types of recreation include kayaking, canoeing, and rafting. This protection applies to unintentional injuries sustained by recreational users and observers.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill is necessary to provide liability protection to hydroelectric project owners for whitewater releases in compliance with the corresponding federal license.

(Opposed) none.

**Persons Testifying:** Jeff Smith and Dave Arbaugh, Chelan Public Utility District; and Larry Shannon, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** None.