

HOUSE BILL REPORT

ESSB 6323

As Reported By House Committee On:

Law & Justice

Title: An act relating to adverse possession affecting forest land.

Brief Description: Clarifying the law of adverse possession affecting forest land.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Roach, Long, Heavey, Swecker, Snyder, McCaslin, Goings and Rasmussen).

Brief History:

Committee Activity:

Law & Justice: 2/27/98 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 2 members: Representatives Constantine, Assistant Ranking Minority Member; and Lantz.

Staff: Daniel Jablonsky (786-5793); Edie Adams (786-7180).

Background: Adverse possession began as a common law doctrine and established statutory roots in Washington in the late 1800s. Adverse possession allows a party possessing real property to establish a claim to the title of that real property against the true owner if certain conditions are met.

In order to establish a claim for adverse possession, there must be possession for at least 10 years, that is: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. The ultimate test of adverse possession is whether the party claiming it exercised dominion over the land in a manner consistent with the actions a true owner would take. Adverse possession focuses on the nature of the possession, not the thought process of the possessor or record owner.

The open and notorious requirement of an adverse possession claim is met if: (1) the true owner had actual notice of adverse use through the statutory period; or (2) the

claimant uses the land so that any reasonable person would assume that the claimant is the owner; in other words, the claimant must show that the true owner knew or should have known, that the claimant's occupancy constituted an ownership claim.

Land owned by government entities is exempted from the adverse possession doctrine. Also, where the true owner has given permission to an occupant to use land, an adverse possession claim is not allowed.

Summary of Bill: To prevail in a claim of adverse possession of forest land, which is land in any contiguous ownership of 20 or more acres primarily devoted to and used for growing and harvesting timber, a party must meet stricter requirements than for other adverse possession claims. Specifically, a party will not be deemed to have established open and notorious possession unless, at a minimum, the party has erected structures, at a cost of greater than \$50,000, that have remained for at least 10 years.

The new requirements do not apply to claimants who relied in good faith on location stakes or boundary markers set by a registered land surveyor. Additionally, the new requirements do not apply to claims brought under statutory provisions for connected title, payment of taxes, or vacant and unoccupied land.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Timber companies and forest landowners face a unique set of problems due to the nature of their land and the time it takes for a mature harvest. While making productive use of their land, they do not necessarily walk their land every 10 years. The application of the common law doctrine of adverse possession needs to be changed as it applies to forest lands to more adequately protect the economic interests of title holders.

Testimony Against: None.

Testified: John Warjome, Port Blakely Tree Farms (pro); and Nels Hanson, Washington Farm Forestry Association (pro).