

# HOUSE BILL ANALYSIS

## HB 2584

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**Title:** An act relating to adverse possession.

**Brief Description:** Requiring possession for twenty years before an adverse possession claim may be brought.

**Sponsors:** Representatives Mielke, Pennington, Ogden, Boldt, Koster, Carlson, Sump, DeBolt, B. Thomas, Hatfield, Doumit, Carrell, Mulliken, Zellinsky, Alexander, Clements, Benson, Reams and Dunn.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**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.

#### Open and Notorious Use:

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.

#### Continuity of Possession:

Possession, to be adverse, must have continued for the entire statutory period. If a mutual or successive relationship known as privity is established, then successive

periods of occupation may be tacked or united to one another to make up the time of adverse holding.

Hostile Possession:

For adverse possession purposes, the element of hostility does not import enmity or ill will; rather, it requires only that the claimant treat the land as his own as against the world throughout the statutory period. When a claimant does everything a person could do with a particular property, it is evidence of open hostility of claim. The adverse possessor's subjective belief in whether the land possessed is actually his own is irrelevant. Where a claimant recognizes a superior title in the true owner during the statutory period, the element of hostility or adversity is not established.

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.

An easement by prescription is the right to use another's real property for a certain purpose, such as passage over the property, if certain elements are established. Prescriptive easements are not favored in law, because there is a presumption that when one uses another's property it is done with the owner's permission. The elements necessary for a prescriptive easement are similar to those for adverse possession and are: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. The time requirement necessary to accomplish a prescriptive easement is 10 years.

**Summary of Bill:** The statutory period of continuous possession required for a claim of adverse possession and easement by prescription is changed from 10 years to 20 years.

The prevailing party in an adverse possession proceeding is required to pay the county auditor the property taxes for the disputed parcel of land equal to the amount paid by another party or the amount owed during the period of adverse possession. The county auditor is then responsible for reimbursing any party, other than the prevailing party, for any taxes actually paid with regard to the real property during the period of the adverse possession.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

Office of Program Research