

SENATE BILL REPORT

ESSB 6323

As Passed Senate, February 17, 1998

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: 1/28/98, 2/6/98 [DPS, DNP].
Passed Senate, 2/17/98, 42-6.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6323 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Hargrove, Long, McCaslin, Stevens, Thibaudeau and Zarelli.

Minority Report: Do not pass.

Signed by Senators Fairley and Kline.

Staff: Harry Steinmetz (786-7421)

Background: Adverse possession is a process through which a person can acquire title to land and extinguish the landowner's legal title. It has existed since the days of the English common law and rooted in the policy that society is best served by land owners utilizing their land and not allowing the land to be unproductive. Thus, under the adverse possession doctrine, if landowners ignore their land while a third party enters the land and uses it, the third party can gain title to that piece of land.

Under current Washington law, initially enacted in 1854, if a third party has used a piece of land for ten years, he or she may bring an action to acquire title to that property. The use of the land must be actual, open and notorious, hostile, uninterrupted and exclusive. In short, the use must give the landowner notice that someone is using the land and the level of use must be consistent with the nature and locale of the land. Exceptions exist for landowners who are incapacitated. The state of mind of the adverse possessor is not relevant to the action to acquire title. Adverse possession can only occur between private parties.

A typical, modern day, adverse possession case involves a boundary line dispute where a neighbor has built a structure or fence over the boundary line. It has been suggested that timberland owners are especially vulnerable to adverse possession claims because there is no need to "walk the ground" on a regular basis. Thus, despite making a productive use of their land, the timberland owners have little opportunity to discover an adverse possessor.

Summary of Bill: Adverse possessors of forest lands, defined as land used for growing and harvesting timber, must show, by clear and convincing evidence, that they have erected substantial improvements on the lands and made use to the improvements for ten years. Substantial improvements means a structure that cost \$50,000 to build. It does not affect claims brought under the statutory schemes of "payment-of-taxes," "connected-title" or "vacant-lands."

Limitations are included for an adverse claimant who relied in good faith on a bona fide land survey, and does not apply to any landowner who owns less than 20 acres for forest land.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Forest landowners are unique. They are making a productive use of their land, but don't necessarily walk their land every ten years. The application of the common law of adverse possession makes no economic sense. This bill would require substantial structures to be built by the adverse possessor and thus increasing the chance the forest landowner would notice the structure and take action to protect his land.

Testimony Against: Although forest landowners are unique, there are more sensible mechanisms to deal with this situation. The arbitrariness of a cost of \$50,000 for a structure would probably increase litigation. Further, it would make adverse possession impossible for all but the wealthy.

Testified: Mike Duffy; Steve Tubbs, WSBA, Real Estate Committee.