

HOUSE BILL REPORT

HB 1305

As Reported by House Committee On:
Judiciary

Title: An act relating to liability for damage to property.

Brief Description: Extending liability for damage to land held or acquired under RCW 64.04.130.

Sponsors: Representatives Buck, Rockefeller, Eickmeyer, Jackley, Doumit, Sump, Pearson and Haigh; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity:

Judiciary: 2/6/01, 2/22/01 [DP].

Brief Summary of Bill

- Makes the civil action for treble damages for cutting or removing vegetation on another person's property applicable to a real property right or interest that has been conveyed for the purposes of conservation.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson, Lovick and McDermott.

Minority Report: Do not pass. Signed by 4 members: Representatives Lambert, Republican Vice Chair; Boldt, Casada and Esser.

Staff: Trudes Hutcheson (786-7384).

Background:

Generally, the owner of real property has a right to use the property as he or she chooses. Sometimes the property may be subject to certain encumbrances, such as easements, covenants, or other restrictions. Such encumbrances may be created in a variety of ways, including by agreement between the owner of the property and the party

wanting the encumbrance.

An easement is a right of use over the property of another and can be created by agreement. A covenant is an agreement between two parties about what can or cannot be done to or on the property.

State and federal agencies, counties, cities, towns, and other metropolitan municipal corporations, nonprofit historic preservation corporations, and nonprofit nature conservancy corporations may hold or acquire a development right, easement, covenant, restriction, or other right or interest (less than an absolute ownership) in land to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land. The right or interest is classified as real property.

State agencies, nonprofit nature conservancies, and other entities often acquire conservation easements— for the purposes of conserving or protecting certain areas of property owned by another. The easements are generally created by agreement between the property owner and the agency or entity. The land, including the portion with the easement, is still owned by the landowner.

Current law provides that a person who goes onto the land of another and removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble damages caused by the removal, waste, or injury. The person may also be liable for the other party's costs and attorney fees.

Summary of Bill:

The statute allowing for treble damages when a person goes onto the land of another and removes timber, crops, minerals, or other valuable property, or wrongfully causes waste or injury applies to the rights and interests acquired by agencies or other entities for conservation purposes. The term goes onto the land of another— includes interference with rights or interests by the owner of the encumbered land.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The bill allows an owner of property to be able to sue for treble

damages for damages done on a conservation easement on the owner's property. The backbone of salmon recovery includes conservation easements. The current law allows for treble damages if someone goes onto the land of another. With conservation easements, oftentimes the person causing damage is a person who is not really going onto the land of another.— This is the case with a new owner subject to the easement.

Testimony Against: None.

(With concerns) Conservation easements are negotiated contracts and these contracts often include enforcement provisions. This bill may not be needed and could be considered unfair. It may have a "chilling effect" on people entering into agreements for conservation easements. Current owners of land may fear exposing future generation owners to treble damage liability.

Testified: (In support) Representative Buck, prime sponsor; and Elyse Kane, Department of Fish and Wildlife.

(With concerns) Len Barson, The Nature Conservancy of Washington.