

SENATE BILL REPORT

SB 5108

As Reported By Senate Committee On:
Land Use & Planning, February 24, 2003

Title: An act relating to criminal trespass.

Brief Description: Removing statutory authority for access to private property for governmental purposes.

Sponsors: Senators Mulliken, Stevens, Morton, Honeyford, Swecker, McCaslin and Parlette.

Brief History:

Committee Activity: Land Use & Planning: 2/13/03, 2/24/03 [DPS, DNP].
Ways & Means: 3/6/03.

SENATE COMMITTEE ON LAND USE & PLANNING

Majority Report: That Substitute Senate Bill No. 5108 be substituted therefor, and the substitute bill do pass.

Signed by Senators Mulliken, Chair; McCaslin, Morton and T. Sheldon.

Minority Report: Do not pass.

Signed by Senator Kline.

Staff: Jennifer Arnold (786-7471)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Steve Jones (786-7440)

Background: A criminal trespass is committed when a person knowingly enters or remains unlawfully on the premises of another. A person "enters or remains unlawfully" when that person is not "licensed, invited or otherwise privileged" to be on the property in question. In general, a person does have privilege and license to enter unfenced, unimproved and apparently unused land unless the land has been conspicuously posted or such person has been given personal notice not to enter.

There are three defenses ordinarily available to a charge of trespass: (1) the premises were open to the public and the defendant complied with all lawful conditions imposed on access; (2) the defendant reasonably believed that the owner of the property would have allowed entry; or (3) the defendant was attempting to serve legal process.

Under current law, many public officials are granted immunity from trespass violations and are given statutory authority to enter private property in furtherance of achieving the statutory goals. Under the Fourth Amendment to the U.S. Constitution and Article I, section 7 of the

state Constitution, either consent of the landowner or a search warrant must be obtained prior to an official's entry onto private property. A court will issue a search warrant only if the official establishes a reasonable cause to believe that a violation has occurred. However, state and federal courts have held that warrantless, administrative searches may legally occur in limited circumstances to enforce regulatory and licensing statutes if necessary to enforce a substantial public interest. These warrantless searches have been approved under a number of legal theories, including a determination that heavily regulated industries do not have a reasonable expectation of privacy, or that obtaining a governmental license (for example, to operate a nursing home or a restaurant) includes an implied consent to periodic inspections.

Summary of Substitute Bill: Criminal trespass in the first and second degree includes state public officials and state employees. A state official or employee is subject to a criminal trespass violation under the same circumstances as any other person, with four limited exceptions. It is not a violation of the criminal trespass statutes for a state official or employee to enter or remain on premises or in a building when: (1) responding to a fire or medical emergency; (2) the official or employee has obtained a warrant or other court order and has made a reasonable attempt to notify the property owner and obtain the owner's permission; (3) the official or employee is a law enforcement officer; or (4) the official or employee is acting under express statutory authority and has first made a reasonable attempt to notify the owner.

The terms "law enforcement officer" and "state official or employee of the state" for the purposes of the criminal trespass statute are defined.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: "Right of entry" statutes should be eliminated to uphold the Fourth Amendment constitutional rights of citizens and prohibit warrantless searches. Officials should be required to obtain warrants in order to protect the rights of citizens while at the same time allowing agencies to do their jobs. This bill would not prevent agencies from doing their jobs; it would merely require agencies to obtain either the "informed consent" of the owner, as is the practice of most agencies currently, or a warrant.

Testimony Against: Weed boards and weed districts oppose the bill because they must inspect many properties daily and they do not have sufficient staff or funds to complete the additional paperwork that would be associated with obtaining warrants. The warrant requirement would delay weed control. Further, the weed boards and districts do not have a history of citizen discontent with their current access policies. The Department of Agriculture would like an exception for plant disease control inspectors and for state veterinarians to be allowed onto private property without a warrant. The Department of Fish and Wildlife would like an exception for biological staff and volunteers to enter property without a warrant.

Testified: Dan Fazio, Washington Farm Bureau (pro); Robert Freeman, Wash. Tea Party (pro); Bruce Bjork, WDFW (concerns); Ezra Eickmeyer (pro); Steve McGonigal, WA State Noxious Weed Control Board (con); Ray Fann, State Weed Board, Whatcom Co. Nox. Weed Control Bd. (con); Tony Stedlemen, Grant Co. Weed Dist. #3 (con); Leslie Emerick, WSDA (concerns); Merton Cooper (pro).