

# SENATE BILL REPORT

## SB 5422

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As Reported by Senate Committee On:  
Natural Resources, Ocean & Recreation, February 04, 2009

**Title:** An act relating to the liability of owners of recreational land and water areas.

**Brief Description:** Limiting liability for making certain land and water areas available for recreational use under a hydroelectric license.

**Sponsors:** Senators Parlette, Jacobsen, Morton, Hewitt, Schoesler, Carrell, Swecker, Stevens, Delvin and Sheldon.

**Brief History:**

**Committee Activity:** Natural Resources, Ocean & Recreation: 1/22/09, 2/04/09 [DPS].

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### SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

**Majority Report:** That Substitute Senate Bill No. 5422 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Ranker, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Hatfield, Stevens and Swecker.

**Staff:** Curt Gavigan (786-7437)

**Background:** Landowner Duty to Invitees Generally. Under Washington tort law, landowners generally owe persons invited to enter their land a duty to use ordinary care to keep that land in a reasonably safe condition. This includes an affirmative duty to inspect the premises and discover dangerous conditions.

Protection Under the Recreational Use Immunity Statute. The Legislature modified this general rule through what is known as the Recreation Use Immunity Statute (statute). The stated purpose of the statute is to encourage landowners, or others in possession and control of land (collectively landowners), to make their land accessible to the public for recreational purposes by limiting their tort liability.

The statute generally provides protection from tort liability for landowners who allow public use of their lands and do not charge a fee. However, landowners may charge an administrative fee of up to \$25 to those cutting, gathering, and removing firewood from their land. Additionally, the following are not considered a fee for purposes of the statute: (1) a

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license or permit issued under the State Parks and Recreation Commission or the Fish and Wildlife statutes; and (2) a daily charge not to exceed \$20 for access to certain public off-road vehicle facilities.

Limitations on the Protection Offered by the Statute. The liability protection offered under the statute is not absolute. The statute does not protect landowners from certain dangerous conditions for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

**Summary of Bill (Recommended Substitute):** The statute is amended to:

- specify that limited-liability protection applies to hydroelectric project owners who allow free recreation on their lands and water areas;
- specify that kayaking, canoeing, and rafting are types of outdoor recreation covered under the statute; and
- provide that releasing water and making water areas available for kayaking, canoeing, or rafting pursuant to a federal hydroelectric license, and allowing the viewing of these activities, does not create a “known dangerous artificial latent condition” that would remove a landowner from protection under the statute. This protection applies to injuries to recreational users and observers, unless the injury is the result of the hydroelectric project owner's gross negligence.

**EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Substitute):** The substitute bill specifies that the protections against releasing water and allowing certain recreational opportunities pursuant to a federal hydroelectric license being considered a "known dangerous artificial latent condition:" (1) is limited only to injuries to recreational users and observers; and (2) does not apply where an injury results from a hydroelectric project owner's gross negligence.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Chelan PUD requests protection from liability under the recreation use immunity statute due to responsibilities to provide water-based recreation imposed by its federal hydropower license. The area in which the PUD must provide recreation involves challenging whitewater and a hillside subject to rockslides. Providing this recreation is not the PUD's choice. This is narrowly crafted to address requirements imposed by the federal government, and should potentially be broadened to protect more project owners.

CON: This bill is unnecessary and could create unintended consequences. The statute already provides complete protection for injuries sustained by natural conditions. Additionally, the PUD can avoid liability by posting warning signs. The language is overbroad, providing protection beyond simply injuries to recreational users.

**Persons Testifying:** PRO: Thomas O'Keefe, American Whitewater; Carol Wardell, Michelle Smith, Chelan PUD.

CON: John Budlong, Washington Association for Justice.