

SENATE BILL REPORT

SB 5562

As of February 4, 2009

Title: An act relating to protecting the ability of forest landowners to continue active forestry operations.

Brief Description: Concerning forestry operations.

Sponsors: Senators Morton, Hargrove, Jacobsen, Sheldon, Holmquist, Schoesler, Shin and Stevens.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/04/09.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Sherry McNamara (786-7402)

Background: Current Washington law provides that certain agricultural activities and forest practices that are conducted in a manner consistent with good practices and established prior to surrounding non-agricultural and non-forestry activities are protected against nuisance lawsuits. In a nuisance lawsuit, a plaintiff may sue a defendant property owner based on the claim that the defendant makes unreasonable use of his or her property to the detriment of the plaintiff's property.

Forest practices are defined in statute as meaning any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- road and trail construction;
- harvesting, final and intermediate;
- precommercial thinning;
- reforestation;
- fertilization;
- prevention and suppression of diseases and insects;
- salvage of trees; and
- brush control.

In 2005, in the case *Alpentel Community Club (ACC) v. Seattle Gymnastics Society (SGS)*, the Washington Supreme Court concluded: "The legislature enacted RCW 7.48.305 to shield

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from nuisance liability certain agricultural and forestry activities that had frequently been the basis for nuisance litigation brought by plaintiffs who had 'come to the nuisance.'" Here, SGS sought immunity under the statute for damage arising from its 1995 clear-cutting of its upslope property. Because the evidence failed to establish that SGS had, prior to ACC's arrival in 1967, logged the property or engaged in any other 'forest practice' preparatory to the logging, SGS was not entitled to nuisance immunity under RCW 7.48.305.

Summary of Bill: The definition of "forest practice" is broadened to mean any activity conducted on or directly pertaining to forest land, including owning land where trees may passively grow until one of the stated activities (road and trail construction, final and immediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of diseases and insects, salvage of trees, and brush control) is deemed timely by the owner.

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: PRO: Growing trees is a long-term investment. It takes years before the trees might be harvested; and, someone just looking at the trees might not be aware that the land is being held for logging purposes. It is important to protect and preserve a forest landowner's right to not only harvest timber, but to grow and cultivate that timber as well. This bill includes the act of owning land upon which trees are growing as a forest practice that is protected from nuisance lawsuits.

Persons Testifying: PRO: Heath Packard, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association.