

SENATE BILL REPORT

HB 1231

As of March 11, 2011

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: Representatives Takko, Armstrong, Condotta, Warnick, Van De Wege, Crouse, Blake and Rodne.

Brief History: Passed House: 2/26/11, 97-0.

Committee Activity: Natural Resources & Marine Waters: 3/10/11.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

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 Recreational 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 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

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conditions for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

Summary of Bill: 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 specified recreation and viewing opportunities pursuant to, and in substantial compliance with, a federal hydroelectric license does not create a known dangerous artificial latent condition that would remove a landowner from protection under the statute. This protection applies to unintentional injuries sustained by recreational users and observers.

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: This bill will help protect Chelan PUD from liability under the recreation use immunity statute as it provides whitewater recreation pursuant to the requirements of its hydroelectric license.

Persons Testifying: PRO: Jeff Smith, Dave Arbaugh, Chelan PUD.