

# SENATE BILL REPORT

## SB 5388

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As of February 1, 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:** Senators Parlette, Regala, Holmquist Newbry, Hatfield and Honeyford.

**Brief History:**

**Committee Activity:** Natural Resources & Marine Waters: 1/31/11.

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### 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: Due to federal hydroelectric licensing requirements, Chelan Public Utility District (PUD) must release water from a dam for whitewater recreational purposes. This bill would help ensure protection from tort liability for the PUD for these actions required by federal mandate. The PUD feels that it could be liable for injuries to those recreating in the whitewater, particularly where the water hides dangerous rocks or drops. While American Whitewater supports the bill, they would like to see language broadened to protect more hydroelectric projects, not just those required by the federal government to provide recreational opportunities.

**Persons Testifying:** PRO: Senator Parlette, prime sponsor; Carol Wardell, Jeff Smith, Chelan County PUD; Thomas O'Keefe, American Whitewater.