

# SENATE BILL REPORT

## SB 6080

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As of January 17, 2012

**Title:** An act relating to landowner immunity from liability for nonintentional injuries to recreational users in connection with forestry and other principal uses of the lands.

**Brief Description:** Regarding landowner immunity from liability for nonintentional injuries to recreational users in connection with forestry and other principal uses of the lands.

**Sponsors:** Senators Haugen, Swecker, Hargrove, King, Fain, Ranker, Ericksen, Becker, Hill, Honeyford, Rolfes, Roach, Sheldon, Delvin and Holmquist Newbry.

**Brief History:**

**Committee Activity:** Energy, Natural Resources & Marine Waters: 1/16/12.

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### SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

**Staff:** Angeline Thomas (786-7470)

**Background:** Landowner Duty to Invitees Generally. Under Washington tort law, landowners generally owe a duty to persons invited to enter their land 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 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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:** Exemptions to what constitutes a known dangerous artificial latent condition under this statute are added. These exemptions include conditions naturally or normally arising from the predominant uses of land including but not limited to road maintenance and timber harvesting.

Landowners are protected under the statute against unintentional injuries to recreational users when the injury relates to one of these exempt conditions.

**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: Off-road vehicle users as well as other recreational users would like to use private timber lands for recreation, but timber land owners are reluctant to grant access because of their exposure to liability for injuries. The Green Diamond Resource Company owns 320,000 acres of timber land, maintains over 500 gates, and is one of an increasingly rare subset of landowners who allow motorized vehicle access during hunting and fishing season and nonmotorized access year round. Timber owners face several maintenance and health and safety-related issues when they allow access to their land such as garbage, trail maintenance, habitat damage, and illegal activities. To assist and encourage landowners to allow access to their properties, the bill should be amended to allow for a modest fee, similar to the discover pass, to help with these costs. Given the current fiscal climate and the threatened closure of state parks, it is important to open up more recreational opportunities without increased taxes.

Though the Department of Natural Resources (DNR) already enjoys immunity, strengthening the statute is important to protect the 1.9 million acres of land open to recreational use. Though DNR maintains warning signs, the signs are often destroyed or moved. DNR recently settled a case out of court for \$2.2 million where a man avoided gates and drove his car into a hole and died. Though this bill is not a cure-all, it gets after the responsible community.

CON: The intent of this bill will not be accomplished. The existing statute is already broad enough. In order to be liable, a landowner must meet a four-part test. The condition must be: (1) known to the landowner; (2) dangerous; (3) artificial, that is, not occurring in nature; and (4) latent. A fallen tree branch is obvious not latent. Furthermore, a landowner can avoid immunity if signs warning of the danger are posted. Also, the language is too broad because terms are not defined.

**Persons Testifying:** PRO: Senator Haugen, prime sponsor; Tod Peterson, WA Off Highway Vehicle Alliance; Patrick Halsted, WA State Motorsports Dealers Assn.; Cullen Stephenson, WA DNR; Patti Case, Green Diamond Resource Company; Debra Munguia, WA Forest Protection Assn.; Tim Boyd, Port Blakely Tree Farms; Brad Tower, WA Christmas Tree Growers; Lori Lennox, Back Country Horsemen of WA.

CON: Larry Shannon, WA Assn. for Justice.