

HOUSE BILL REPORT

SSB 6207

As Reported by House Committee On: Judiciary

Title: An act relating to fee immunity for certain water facilities.

Brief Description: Providing fee immunity for certain water facilities.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senator Angel).

Brief History:

Committee Activity:

Judiciary: 2/20/14, 2/26/14 [DP].

Brief Summary of Substitute Bill

- Permits specified fees to be charged for the docking, moorage, and launching of boats, and the parking of vehicles with boat trailers, while still retaining the immunity granted under the Recreational Land Use Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Jenna Zwang (786-7290) and Cece Clynych (786-7195).

Background:

Landowner Duties, Generally.

Under Washington tort law, a landowner's duty of care to persons entering his or her land depends on the status of the entering party: invitee, licensee, or trespasser. Generally, landowners owe trespassers and licensees only a duty to refrain from willfully or wantonly injuring them. Landowners owe invitees an affirmative duty to keep the land in reasonably safe condition. This includes an affirmative duty to inspect the premises in order to discover

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any dangerous conditions, and landowners may be held liable for unintentionally causing harm through acts of negligence, gross negligence, or recklessness.

Recreational Land Use Act.

Originally enacted in 1967, the Recreational Land Use Act prescribes an alternative framework for determining landowner liability in certain cases. The purpose of the recreational use statute is to "encourage property owners to provide free recreational areas for public use by limiting a property owner's liability for injuries to recreational users."

A landowner who allows the public to use his or her land for certain recreational purposes will be immune from liability for unintentional injuries suffered by a recreational user. The immunity does not apply, however, to injuries caused by a "known dangerous artificial latent condition" on land where warning signs have not been posted. A landowner must have actual (as opposed to constructive) knowledge that a condition that is not readily apparent to a recreational user poses an unreasonable risk of harm in order for it to be considered known, dangerous and latent.

Immunity extends to landowners who allow activities that include the following:

- cutting, gathering, and removing firewood;
- hunting, fishing, and clam digging;
- camping and picnicking;
- swimming, hiking, rock climbing, and horseback riding;
- bicycling, skateboarding, and other non-motorized wheel-based activities;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating, kayaking, canoeing, rafting, and other water sports;
- viewing historical, archeological, or scenic sites;
- winter sports; and
- hang-gliding and paragliding.

Both public and private landowners who allow public use without a fee are protected. There are three exceptions to the no-fee requirement: (1) landowners may assess a \$25 administrative fee for the cutting, gathering, and removing of firewood; (2) landowners may charge up to \$20 per person per day for access to public off-road vehicle facilities; and (3) certain passes and permits required by state agencies do not qualify as fees.

Moorage Facility.

The term "moorage facility" is defined differently in different laws and rules. As defined in the statutory chapter concerning the powers of port districts, "moorage facility" means any property or facility owned or operated by a moorage facility operator which is capable of use for the moorage or storage of vessels. "Moorage facility operator" means any port district, city, town, metropolitan park district, or county owning or operating a moorage facility.

In rules adopted by the Department of Natural Resources (DNR) governing the management of state-owned aquatic lands, "moorage facility" means marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site. Aquatic lands mean all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters. Aquatic lands are part of the public lands of Washington.

Summary of Bill:

Two more exceptions to the no-fee requirement are specified:

1. Charges up to \$20 per day or \$100 annually may be assessed for the docking or moorage of vessels at a moorage facility as that term is defined in the statute regarding powers of port districts and in the rule adopted by the DNR with respect to aquatic lands.
2. Charges may be assessed at a rate of up to \$20 per day or \$100 annually for the launching of boats at a boat ramp, or the parking of boat trailers and attached vehicles in a parking lot adjacent to the boat ramp.

Every two years the maximum daily charge of \$20 will increase by \$1, and the maximum annual charge of \$100 will increase by \$5.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will help all communities that allow public moorage by fixing the liability for a slip and fall or a skinned knee that comes with charging a fee. The Legislature has previously adopted similar exceptions for the Discover Pass and for off-road vehicle parks. Gig Harbor has been exploring ways that it can provide more amenities at public docks. Boaters want water and power at public docks. Cities have the authority to impose a moorage fee and boaters are willing to pay the fee. This legislation is addressing the liability that comes with charging a fee. Cities that charge fees for boat mooring are liable for any unintentional injuries that occur on the docks. Only if the city charges no fee does it fall under the immunity provision. This bill will allow cities to impose a daily moorage fee and maintain immunity from unintentional injuries. It will give cities an opportunity to generate revenue to provide the amenities that their residents want.

A distinction that needs to be pointed out is that this bill does not authorize the city to impose a new fee. The city already has this authority. Until the case of *Plano v. Renton* was decided by the Court of Appeals in 2000, Gig Harbor was charging a fee. In that case, the court ruled that if a city imposes a fee then it is liable for any unintentional injuries on the dock, even if the person injured did not pay the fee. As a result of that case, Gig Harbor discontinued charging fees because the fees did not generate enough revenue to cover the liability costs.

(Opposed) None.

Persons Testifying: Senator Angel, prime sponsor; and Briahna Taylor and Jill Guernsey, Gig Harbor.

Persons Signed In To Testify But Not Testifying: None.