

HOUSE BILL REPORT

SHB 1464

As Amended by the Senate

Title: An act relating to the development of cooperative agreements to expand recreational access on privately owned lands.

Brief Description: Concerning the development of cooperative agreements to expand recreational access on privately owned lands.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Blake, Orcutt, Chapman and Tarleton; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity:

Judiciary: 1/31/17, 2/9/17 [DPS].

Floor Activity:

Passed House: 2/27/17, 89-7.

Senate Amended.

Passed Senate: 4/11/17, 48-0.

Brief Summary of Substitute Bill

- Provides that landowners who enter into a public access agreement with the Washington Department of Fish and Wildlife (WDFW) are not liable for unintentional injuries to volunteer groups or other users of their land as long as they do not charge a separate access fee.
- Provides that payments to landowners from state, local, or nonprofit organizations must be established under public access agreements with the WDFW in order to not be considered "fees" for the purpose of receiving immunity under the outdoor recreation provision.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Hansen, Kirby, Klippert and Orwall.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Haler and Shea.

Staff: Audrey Frey (786-7289).

Background:

Public Use for Outdoor Recreation. Landowners and certain other persons who allow members of the public to use their land or water areas for the purposes of outdoor recreation without charging a fee are not liable for unintentional injuries to users of their land or water areas, with certain exceptions.

"Outdoor recreation" includes a wide variety of activities, such as hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding, aviation activities, rock climbing, horse riding, clam digging, pleasure driving of off-road vehicles, boating, kayaking, nature study, and other similar activities.

For the purposes of this section, "fee" does not include: (a) a license or permit issued for statewide use under the Parks and Recreation Commission laws or Fish and Wildlife laws; (b) a pass or permit, such as a Discover Pass, day-use permit, or vehicle access pass; and (c) a daily charge not to exceed \$20 per person, per day, for access to a publicly owned off-road vehicle sports park or other public facility accessed by road or highway for off-road vehicle use.

Use for Cooperative and Cleanup Projects. Landowners and certain other persons who offer or allow their land or water areas to be used for purposes of a fish or wildlife cooperative project, or allow access to their land or water areas for cleanup of litter or solid waste, are not liable for unintentional injuries to any volunteer group or to any other users, with certain exceptions.

Private Lands Access and Habitat Enhancement. Since the 1940s, the Washington Department of Fish and Wildlife (WDFW) has entered into many agreements with private landowners to open over 1 million acres of private land to the public for activities such as hunting and fishing. Sometimes these agreements involve payments to landowners or technical assistance from the WDFW to help improve fish and wildlife habitat on these lands.

Summary of Substitute Bill:

Landowners or other persons in lawful possession and control of land or water areas who enter into public access agreements with the Washington Department of Fish and Wildlife (WDFW) are not liable for unintentional injuries to any users of these land or water areas as long as they do not charge a separate access fee.

Payments to landowners from state, local, or nonprofit organizations are not considered "fees" for the purpose of determining immunity under the outdoor recreation provision if these payments are established under public access agreements with the WDFW.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- removes language providing that landowners and certain other persons who enter into public access agreements with the Washington Department of Fish and Wildlife (WDFW) and do not charge an access fee are not liable for unintentional injuries to any volunteer group or to any other users of these land or water areas; and
- modifies language regarding the types of payments that are not considered "fees" for the purpose of determining immunity under the outdoor recreation provision such that payments to landowners from state, local, or nonprofit organizations are not considered "fees" if these payments are established under WDFW cooperative public access agreements and the landowner does not charge a fee to access the land subject to the cooperative agreement.

Appropriation: None.

Fiscal Note: Available.

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) Recreational access issues change over time. A new model for large landowners is to charge fees for recreational access. Sometimes these fees become barriers for families in accessing these lands. The Washington Department of Fish and Wildlife (WDFW) has begun to understand how this is affecting the work they do. This bill is an effort to modify the recreational immunity statute in a way that would allow the WDFW to enter into agreements with private landowners to lower the barriers to public access while working with private landowners to deal with issues they face, like vandalism when they open up their lands. This bill will get families back recreating on these lands.

The WDFW currently has agreements with hundreds of private landowners that encompass hundreds of thousands of acres. These landowners should be protected from liability when folks recreate on their private land. More than 50 percent of the acres in Washington are private land, which limits where people can access the wildlife that the WDFW manages. The WDFW often supplies volunteers to do clean-up and habitat-type treatments for folks that allow public recreation on their private land, and this bill would also protect the landowner from liability for any potential injuries that might occur to those volunteers.

Hunting, fishing, and wildlife viewing are all part of the rural culture and ethic. For folks who live in the suburbs and urban environments, having opportunities to go out and participate in those activities is also important. There are thousands of acres that are owned by the private sector, and many of these private landowners are willing to open up their lands for individuals to come onto their lands and participate in hunting, fishing, and wildlife viewing. To enhance that opportunity, many of these private landowners enter into agreements with the WDFW that create hunting blinds or other habitat improvements on their property. That's the payment that's talked about: it's actually a project that's paid for on the private property that helps to enhance the public's opportunities to go hunting and fishing out there.

(Opposed) Recreation is a wonderful thing. This is a very broad statute in the state of Washington that applies to public and private lands, and nobody is suggesting that recreation shouldn't continue. But this bill has some inconsistencies. Volunteers are already covered under the current statute. The issue is the fee. A payment for a specific project is one thing, but the bill language just says payment, and doesn't say the payment has to be for a project. It says government or nonprofit. A large corporation could be paid a fee, and the large corporation would still get the broad immunity. There is nothing in this bill that stops private landowners from charging a fee. The only thing that happens if a fee is charged is that the landowner is kicked out of the recreational immunity provision. The landowner may still have waivers, may still post warnings, and the assumption of the risk doctrine still applies for many activities. If a landowner wants to charge a fee, they can do so, but they should not be given immunity under the recreational immunity statute. The bill is overly broad as it is drafted at this point.

Persons Testifying: (In support) Representative Blake, prime sponsor; Anis Aoude, Washington Department of Fish and Wildlife; and Tom Davis, Washington Farm Bureau and Washington Cattlemen's Association.

(Opposed) Michael Temple, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.