

# SENATE BILL REPORT

## SB 5384

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As Reported by Senate Committee On:  
Natural Resources & Parks, February 14, 2017

**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:** Senators Fortunato and Takko; by request of Department of Fish and Wildlife.

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 1/31/17, 2/14/17 [DP, DNP].

**Brief Summary of Bill**

- Specifies that limited liability protection under the recreational use immunity statute applies to certain public access agreements.

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** Do pass.

Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Fortunato.

**Minority Report:** Do not pass.

Signed by Senators Van De Wege, Ranking Minority Member; McCoy.

**Staff:** Curt Gavigan (786-7437)

**Background:** Landowner Duty to Invitees in General. 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

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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.*

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 for recreation and do not charge a fee. However, the following are not considered a fee for purposes of the statute:

- an administrative charge of up to \$25 to those cutting, gathering, and removing firewood from their land;
- a license or permit issued under State Parks and Recreation Commission, Fish and Wildlife, and Discover Pass statutes; and
- 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 conditions for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

**Summary of Bill:** Limited-liability protection under the statute is specifically provided to a landowner who enters into an agreement with the Department of Fish and Wildlife to provide public access.

Additionally, payments to landowners from state, local, or nonprofit organizations under a public access agreement are not considered fees that would disqualify a landowner from limited-liability protection under the statute.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill will help indemnify a landowner providing public access, but it does not remove all liability. A significant amount of recreation occurs on private land, and it is increasingly difficult to recruit landowners to open their lands up. This will help with that issue by clarifying when lands are protected from lawsuit.

**Persons Testifying:** PRO: Senator Phil Fortunato, Prime Sponsor; Anis Aoude, WDFW; Tom Davis, WA Farm.

**Persons Signed In To Testify But Not Testifying:** No one.