
Civil Rights & Judiciary Committee

HB 1288

Brief Description: Concerning department of natural resources' land acquisitions.

Sponsors: Representatives MacEwen and Griffey.

Brief Summary of Bill

- Places restrictions upon the Department of Natural Resources with respect to acquisition of property, including its use of adverse possession and the establishment of boundary lines of aquatic lands.

Hearing Date: 1/29/19

Staff: Cece Clynch (786-7195).

Background:

Department of Natural Resources' Land Management.

The management of state land has been delegated to a number of different agencies, including the Department of Natural Resources (DNR). Both Natural Resource Conservation Areas (NCRAs) and Natural Area Preserves (NAPs) are part of the DNR Natural Areas Program (Program) which is responsible for managing the statewide system of conservation lands. Currently, the Program protects more than 132,000 acres in 83 natural areas throughout the state. Natural areas offer some form of public access tailored to the particular area and the sensitivity of its features. Generally, NAPs protect the highest quality native ecosystems and host more sensitive or rare species; NCRAs, on the other hand, often include significant geologic features, archaeological resources, or scenic attributes and have developed public access facilities.

The DNR is authorized in statute to acquire property for NRCAs and NAPs. For purposes of a NAP, the DNR is expressly authorized to acquire the fee or any lesser right or interest in real property by gift, devise, purchase, grant, dedication, or means other than eminent domain. For a NCRA, the DNR may acquire property by all means, except eminent domain.

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.

Adverse Possession.

The doctrine of adverse possession allows a person who, without permission, physically possesses another's land to make a legal claim against the title holder in order to gain title to the property. For a person to make a successful claim, he or she must have sufficiently possessed the property for a set period of time and meet several additional conditions stemming both from common law and state statutes. Adverse possession claims may arise as a defense to actions for ejectment or to quiet title. This doctrine dates to early English legal history and rests on the idea of conforming title to appearances of possession long held on the ground.

Washington law generally requires the adverse possessor to have possessed the land at issue for at least 10 years before an adverse possession action is commenced. In certain situations, state statutes reduce the length of possession necessary to seven years.

Judicial decisions generally require an adverse possession to be: (1) open and notorious, such that possession is visible and discoverable to the true owner; (2) actual and uninterrupted, requiring sufficient physical possession or use of the land over a continuous, specified length of time; (3) exclusive, or not shared with the true owner; and (4) hostile, or objectionable to the owner of the land considering the character of possession and locale of the property. Courts presume the holder of legal title to the land has possession, so the party claiming to have adversely possessed the property has the burden of establishing the existence of each element for the requisite period.

"Tacking" is a term that refers to the joining together of the periods of more than one adverse possessor to form a continuous period sufficient to satisfy the continuous specified length of time requirement. Generally, if there is sufficient privity between successive adverse possessors, the courts have recognized the successive shorter periods as uninterrupted for purposes of satisfying this requirement.

Washington also recognizes easements by prescription, a doctrine essentially equivalent to adverse possession. An easement is a property right that provides the easement holder with a right to use the property owner's land in some way or another. Common easements include the right to use property for driveways, roads, and utility lines.

Establishing Sideline Boundaries for Aquatic Lands.

Courts in Washington have employed what is sometimes called the Massachusetts Rule to establish the sideline boundaries between adjoining pieces of aquatic lands. The rule recognizes that one of the basic rights enjoyed by owners of adjoining aquatic lands is the right of access to open water. Where there is disagreement about the location of the boundary, the sidelines for these lands may be determined only by survey made in accordance with the rule:

- The sidelines may be divided between adjoining owners by lines drawn perpendicular to the shoreline only in cases where the shoreline is straight, or substantially straight.
- In the case of aquatic lands situated on coves or headlands, each upland owner is entitled to a proportionate share of the aquatic lands. In the case of a cove, the direction of the division lines will converge, while in the case of a headland the direction of the division lines will diverge.

Summary of Bill:

In the context of the management of public lands generally, if the Department of Natural Resources (DNR) is seeking to acquire private lands through adverse possession, the claim must:

- rely on the actions of the requesting party and not the actions of the general public;
- include fair and clear notice that the land is being used by the DNR; and
- include evidence of physical occupation of the property sufficient to provide the property owner constructive or actual notice of the claim.

If the DNR is seeking to clarify boundary points or lines of aquatic lands (tidelands, shorelands, harbor areas, and the beds of navigable waters), surveyors must review the existing public record and landmarks. "Equitable apportionment" is only appropriate to the extent that the boundary points and lines cannot be ascertained from the public record, landmarks, and other publicly available documentation. "Equitable apportionment" is defined to mean "that if tideland boundaries are ambiguous, the court may draw boundaries proportionately based on the amount of upland frontage so that each upland owner has access to navigable water."

The DNR is expressly prohibited from acquiring property for Natural Area Preserves and Natural Resource Conservation Areas by adverse possession or equitable apportionment.

Appropriation: None.

Fiscal Note: Requested on January 23, 2019.

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