

SENATE BILL REPORT

SB 5102

As of January 25, 2019

Title: An act relating to department of natural resources' land acquisitions.

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

Sponsors: Senator Sheldon.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/24/19.

Brief Summary of Bill

- Limits the use of adverse possession and equitable apportionment by the Department of Natural Resources when acquiring private lands.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Jeff Olsen (786-7428)

Background: The Department of Natural Resources (DNR) manages nearly 3 million acres of uplands and over 2 million acres of aquatic lands. DNR is authorized to acquire property for management as natural resource conservation areas (NRCAs) and as natural area preserves (NAPs). NRCAs are established for their outstanding scenic and ecological values, and allow for low-impact public use. DNR is required to develop a management plan for each NRCA that identifies the significant resources to be conserved and the areas with potential for low-impact public and environmental educational uses.

NAPs have more limited public access and are established in order to preserve the best remaining examples of Washington's native ecosystems. DNR is responsible for maintaining a state register of NAPs, maintaining a natural heritage program to assist in nominating and selecting areas for this designation, and for preparing a natural heritage plan to create and manage the system of natural areas. The Natural Heritage Advisory Council assists DNR by reviewing and approving the natural heritage plan, and reviewing and approving nominations

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for registration of lands as natural area preserves. DNR may not acquire land for either a NRCA or NAP through eminent domain.

Adverse possession is a legal doctrine that allows a party who possesses real property without permission to establish a claim to the title of the real property against the record owner if certain conditions are met. To bring a successful action, a person must have sufficiently possessed the property for a set period of time and meet several additional conditions stemming from both statutory and common law

Summary of Bill: A claim for adverse possession brought by DNR must include fair and clear notice that the land is being used by DNR and include evidence of physical occupation of the property sufficient to provide a property owner constructive or actual notice of the claim. If 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.

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

DNR may not acquire lands for NRCAs or NAPs through adverse possession or equitable apportionment.

Appropriation: None.

Fiscal Note: Not requested.

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: DNR is attempting to re-draw boundary lines on certain tidelands in Dewatto Bay. There needs to be safeguards that protect private property owners who allow the public to occasionally access private property to access tidelands. DNR should not be able to take lands through adverse possession because someone allowed public use. A public agency should not take private property without just compensation. The state sold tidelands to a private property owner, and DNR should not be able to disregard the title and redraw boundary lines. This raises broader concerns about impacts to waterfront property owners.

CON: It is not clear how the bill would work. Equitable apportionment is a well established legal tool, and limiting DNR's ability to use it could have wide impacts. DNR has never used adverse possession to take property.

Persons Testifying: PRO: Senator Tim Sheldon, Prime Sponsor; Laure Iddings, citizen; Dave Haugen, citizen; Brad Carey, citizen; Robin Birkland, Washington Realtor Association;

Marcus T Reum, Wise Daddy Washington; Bill Anspach, citizen; Randy Neatherlin, citizen.

CON: Kristin Swenddal, Washington Department of Natural Resources.

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