

SENATE BILL REPORT

HB 1483

As of March 16, 2009

Title: An act relating to protecting the ability of forest landowners to continue active forestry operations.

Brief Description: Concerning forestry operations.

Sponsors: Representatives Jacks, Chandler, Van De Wege, Takko, Kretz, Pearson, Hurst, Orcutt, McCoy, Blake and McCune.

Brief History: Passed House: 2/23/09, 92-0.

Committee Activity: Natural Resources, Ocean & Recreation: 3/16/09.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Sherry McNamara (786-7402)

Background: In a nuisance lawsuit, a plaintiff may sue a defendant property owner based on the claim that the defendant makes unreasonable use of his or her property to the detriment of the plaintiff's property.

Current Washington law provides that certain agricultural activities and forest practices that are conducted in a manner consistent with good practices and established prior to surrounding nonagricultural and nonforestry activities are protected against nuisance lawsuits.

Forest practices are defined in statute as meaning any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- road and trail construction;
- harvesting, final and intermediate;
- precommercial thinning;
- reforestation;
- fertilization;
- prevention and suppression of diseases and insects;
- salvage of trees; and
- brush control.

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.

In 2005 in the case *Alpental Community Club (ACC) v. Seattle Gymnastics Society (SGS)*, the Washington Supreme Court concluded: "The legislature reenacted RCW 7.48.305 to shield from nuisance liability certain agricultural and forestry activities that had frequently been the basis for nuisance litigation brought by plaintiffs who had 'come to the nuisance.'" Here, SGS sought immunity under the statute for damage arising from its 1995 clear-cutting of its upslope property. Because the evidence failed to establish that SGS had, prior to ACC's arrival in 1967, logged the property or engaged in any other 'forest practice' preparatory to the logging, SGS was not entitled to nuisance immunity under RCW 7.48.305.

Summary of Bill: As used in the context of nuisance actions only, the definition of "forest practice" is broadened to mean any activity conducted on or directly pertaining to forest land, including owning land where trees may passively grow until one of the stated activities (road and trail construction, final and immediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of diseases and insects, salvage of trees, and brush control) is deemed timely by the owner.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill protects forests owned by families and businesses who have invested years in growing their trees from a neighbor who may not see the land as being managed as a forest. It generally takes at least 40 years to grow harvestable timber, and this bill protects and clarifies the landowner's right to practice forestry and be immune from nuisance lawsuits.

Persons Testifying: PRO: Representative Jacks, prime sponsor; Peter Goldmark, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association.