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**Agriculture & Natural Resources  
Committee**

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**HB 2506**

**Brief Description:** Allowing access roads to private property surrounded by certain public lands.

**Sponsors:** Representatives Hinkle, Armstrong, Blake, Shabro, Buck, Hatfield, Upthegrove, Condotta, Moeller, McMorris and Bush.

**Brief Summary of Bill**

- Requires the state Department of Natural Resources, Department of Fish and Wildlife, and Parks and Recreation Commission to grant landlocked property owners permits for access roads across state lands under certain circumstances.

**Hearing Date:** 1/23/04

**Staff:** Caroleen Dineen (786-7156).

**Background:**

Several state agencies administer, manage, or operate lands owned by the state. For example, the state Department of Natural Resources (DNR) manages the state's upland properties for the benefit of the designated trust beneficiaries and has regulatory and aquatic land management responsibilities related to public lands. In addition, the state Department of Fish and Wildlife (DFW) and state Parks and Recreation Commission (Commission) have statutory authority to manage certain state-owned lands.

Easements or Permits for Access Across State Land

The DNR has statutory authority to grant access to private property owners across the state lands it manages. The DNR may grant any person the same type of easement or other right in these state lands that the person could acquire in private lands through eminent domain proceedings. The DNR also may grant permits to any person for the use of access roads on the state-owned lands it manages. This authority may be exercised when the DNR determines that granting the access road permit is in the state's best interests and when the rights acquired by the state allow a permit to be granted. The access road permit is subject to reasonable regulation by the DNR, including:

- requirements for construction, reconstruction, maintenance, and repair;
- limitations as to extent and time of use;

- provision for revocation at the DNR's discretion; and
- charges for use.

### Private Way of Necessity

State law allows a property owner to acquire a "private way of necessity" across another person's property for ingress to and egress from his or her landlocked property. The landlocked property owner must demonstrate a reasonable need for the access and must pay the other property owner for the private way of necessity. Surrounding and contiguous property owners must be joined in the court proceeding filed to establish a private way of necessity. State statutes specify route selection criteria if more than one possible route exists.

A 1941 Washington Supreme Court case authorized a private way of necessity across an easement given to a private party that was located on state land. State ex rel. Polson Logging Co. v. Sup. Ct. of Grays Harbor County, 11 Wn.2d 545 (1941). Later appellate case law, however, specifies the private way of necessity statutes do not expressly authorize acquisition on public land and therefore may not be considered authority to acquire these rights on public land (state or local). Granite Beach Holdings v. DNR, 103 Wn. App. 186 (Div. I) (2000); Jobe v. Weyerhaeuser Company, 37 Wn. App. 718 (Div. I 1984).

### **Summary of Bill:**

Private property owners may obtain access to their landlocked properties across state-owned land under certain circumstances. An owner or person entitled to the beneficial use of private land completely surrounded by state-owned land may obtain a permit to use, improve, or construct an access road(s) across that state land when:

- the state land is administered, managed, or operated by the DNR, DFW, or Commission;
- no right of way allowing access to the private land exists on that land or on another private property; and
- an access road(s) across state land is necessary to provide ingress to and egress from the private land.

The private land owner's request for a permit must be in writing. Upon receipt of such a request, the DNR, DFW, or Commission may request reasonable documentation to demonstrate the requirements for obtaining such an access road(s) have been satisfied. When a sufficient demonstration is made, the agency receiving the request must issue the permit to:

- use an existing access road(s);
- improve an existing access road(s) or construct a new access road(s); or
- agree in writing to improve an existing access road(s) or construct a new access road(s) and then issue a permit allowing the use.

The permit is subject to reasonable regulation by the issuing agency, including requirements for construction, reconstruction, maintenance, or repair as well as payment or reimbursement of costs associated with these activities.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/20/04.

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