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**SUBSTITUTE SENATE BILL 5145**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Short, Salomon, McCune, and Warnick)

AN ACT Relating to clarifying existing law regarding liability protections associated with public recreational use of lands or waters under a hydroelectric license issued by the federal energy regulatory commission; amending RCW 4.24.210; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 4.24.210 and 2017 c 245 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hang gliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for boating, swimming, fishing, kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040;

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use; and

(d) Payments to landowners for public access from state, local, or nonprofit organizations established under department of fish and wildlife cooperative public access agreements if the landowner does not charge a fee to access the land subject to the cooperative agreement.

NEW SECTION. **Sec.**  This act does not apply to any action filed prior to the effective date of this section.

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