

HOUSE BILL REPORT

SHB 2506

As Passed House:

February 11, 2004

Title: An act relating to allowing property owners to acquire access to landlocked parcels across public lands.

Brief Description: Concerning easements and rights in state-owned lands.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Hinkle, Armstrong, Blake, Shabro, Buck, Hatfield, Uptegrove, Condotta, Moeller, McMorris and Bush).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/23/04, 2/3/04 [DPS].

Floor Activity:

Passed House: 2/11/04, 94-0.

Brief Summary of Substitute Bill

- Requires the Department of Natural Resources and the Department of Fish and Wildlife to grant easements and other rights in state lands to landlocked property owners under certain conditions.
- Authorizes the Department of Fish and Wildlife to grant easements and other rights in state lands under other circumstances and within certain specifications.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

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) has 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. While a Washington Supreme Court decision authorized a private way of necessity across an easement on state land that had been given to a private party, later appellate decisions indicate that the private way of necessity statutes do not expressly authorize an acquisition of public land and may not be considered authority to acquire these rights on state or local public land.

Summary of Substitute Bill:

Private property owners may obtain access to their landlocked properties across state-owned land under certain circumstances. The DNR and DFW must grant easements and rights in state-owned lands they administer when:

- a person's property is landlocked by those state lands;
- there has been historical usage of those state lands to access the person's property;
- and
- the easements or other rights in those state lands are needed to access the person's property.

The DFW is expressly authorized to grant easements and rights in the state-owned lands it administers to the same extent that a person may acquire rights in privately owned lands through proceedings in eminent domain. The full market value of the right granted and any damages to remaining state property must be paid before such a grant may be made.

Any easements or rights granted by the DFW (both mandatory and permissive) must be as necessary to provide for historical use and must be granted along routes the DFW selects to minimize impacts to state resources. In addition, any road constructed by the DFW to grant easements or rights must be constructed in compliance with the Forest Practices Board's road construction and maintenance rules.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) The issue in this bill was raised by a constituent concern but addresses a principle and not a single incident. This bill's intent is to prevent purchases of land by state agencies at reduced prices because access is not recognized in the land's title. The bill is not intended to force state agencies to build roads or to circumvent forest road standards. This bill could be amended to focus on historical users of state land.

(Concerns) (Original bill) Existing statutory authority for private ways of necessity requires consideration of a set of criteria, including avoiding agricultural land and availability of alternative routes. The DNR has issued thousands of private access rights but cannot use trust funds for non-trust management purposes. New road construction in environmentally sensitive or wildlife areas creates concerns. Agencies are willing to look for access opportunities in situations involving historical use.

Testimony Against: None.

Persons Testifying: (In support) Representative Hinkle, prime sponsor.

(With concerns) Howard Thronson, Washington State Department of Natural Resources;
and Steve Pozzanghera, Washington State Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.