

# SENATE BILL REPORT

## SHB 2506

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As of February 16, 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:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Hinkle, Armstrong, Blake, Shabro, Buck, Hatfield, Upthegrove, Condotta, Moeller, McMorris and Bush).

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 2/18/04.

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### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

**Staff:** Victor Moon (786-7469)

**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. DNR has statutory authority to grant access to private property owners across the state lands it manages. 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. 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 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 DNR, including:

- requirements for construction, reconstruction, maintenance, and repair;
- limitations as to extent and time of use;
- provision for revocation at 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 Bill:** Private property owners may obtain access to their landlocked properties across state-owned land under certain circumstances. 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.

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 DFW (both mandatory and permissive) must be as necessary to provide for historical use and must be granted along routes DFW selects to minimize impacts to state resources. In addition, any road constructed by 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:** Ninety days after adjournment of session in which bill is passed.