

HOUSE BILL REPORT

SSB 5145

As Passed House:

April 11, 2023

Title: 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.

Brief Description: 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.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Short, Salomon, McCune and Warnick).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/22/23, 3/24/23 [DP].

Floor Activity:

Passed House: 4/11/23, 97-0.

Brief Summary of Substitute Bill

- Exempts a landowner who releases water or flows and makes waterways available for recreational use from liability for injuries sustained by the public while boating, swimming, or fishing.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Staff: Matt Sterling (786-7289).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Generally, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands, including water areas, who allow members of the public to use the areas for the purposes of outdoor recreation are not liable for unintentional injuries to such users.

This exemption does not apply to injuries sustained by users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Known dangerous artificial latent conditions do not include releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to a hydroelectric license issued by the Federal Energy Regulatory Commission (FERC).

The term "recreation" includes:

- 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 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; and
- viewing or enjoying historical, archaeological, scenic, or scientific sites without charging a fee of any kind.

Summary of Bill:

A landowner who releases water or flows and makes waterways or channels available for recreational use pursuant to a hydroelectric license issued by the FERC is not liable for injuries sustained by the public while boating, swimming, or fishing.

The exemption from liability for such landowners does not apply to any action filed prior to the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) It became apparent that the general liability statute and the statute that governs hydropower projects needed to be reconciled. The recreational opportunities provided by our hydropower parks are great, but they do result in issues sometimes. They are mandated by their federal licenses to provide those opportunities to the public, so this bill just clarifies and makes it more transparent what the liability situation is for the use of these areas. The Grant County Public Utility District owns and operates two hydroelectric dams on the Columbia River and are licensed by the FERC and must be operated consistent with this license which requires recreational opportunities. There are a variety of 19 recreational activities and studies show that around 350,000 people will visit one of these sites each year. We appreciate the clarity provided by this bill so hydro-specific recreational activities include all water-dependent uses in the liability statute. We worked closely with other utilities on this bill and the bill passed unanimously out of the Senate.

(Opposed) None.

(Other) We appreciate the work that was done in committee to address concerns and eliminate opposition to the bill. The activities of boating, fishing, and swimming have always been an explicit part of the general immunity statute that was adopted by the Legislature in 1967. Some confusion was created concerning how it applies to certain FERC-regulated waterways because of an amendment that was narrowly designed to address a different issue, but was interpreted a little more broadly. We believe this bill will restore the original intent and application of this statute and ensure that it does apply to some of these FERC-regulated waterways. The activities listed here will still be subject to a very limited safety exception from the immunity.

Persons Testifying: (In support) Senator Shelly Short, prime sponsor; and Ryan Holterhoff and Bill Clarke, Grant County Public Utility District.

(Other) Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.