

SENATE BILL REPORT

SSB 5145

As Passed Senate, March 7, 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: Law & Justice: 2/13/23, 2/16/23 [DPS].

Floor Activity: Passed Senate: 3/7/23, 48-0.

Brief Summary of First Substitute Bill

- Expands a landowner's exemption from liability for releasing water or flows and making waterways available for recreation by exempting injuries sustained while boating, swimming, or fishing.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5145 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Kevin Black (786-7747)

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: Public and private landowners and hydroelectric project owners in lawful control of lands or water areas are not liable for unintentional injuries sustained by members of the public who use them with the permission of the owner for outdoor recreation.

This exemption does not apply to injuries sustained by users by reason of a known dangerous artificial latent condition for which warnings 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).

Summary of First Substitute Bill: The landowner's exemption from liability for injuries sustained by the public from releasing water or flows and making waterways or channels available for recreation pursuant to a hydroelectric license issued by FERC is expanded to include boating, swimming, and fishing.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Several hydropower facilities in my district provide amazing places for recreation. Dangers do exist so we want to tighten language to make sure the owners of these properties aren't hurt by allowing access. Our dams are licensed by FERC and we have to follow their regulations, including by providing access to recreation, which includes boat launches, swimming areas, campgrounds, and more. Water level flows can change suddenly. This language clarifies that natural fluctuations which occur during the operation of dams within licensed parameters do not create known dangerous artificial latent conditions. Federal license requirements define the normal operating range, which should also define safe operating levels; we aren't asking for liability protection if flow levels are abnormal.

CON: The recreational immunity statute is the most expansive immunity statute on the books. It has a well-designed good purpose to encourage private landowners to offer land for recreation. The five prongs of the known dangerous artificial latent condition test provide substantial protection and if it fails all the landowner has to do is post a sign. The threat of liability encourages public safety.

Persons Testifying: PRO: Senator Shelly Short, Prime Sponsor; Ryan Holterhoff, Grant PUD; Bill Clarke.

CON: Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.