

HOUSE BILL REPORT

SSB 5862

As Reported by House Committee On:

Natural Resources

Title: An act relating to improving the business practices associated with selling valuable materials on trust land.

Brief Description: Streamlining the process of selling valuable materials from state lands.

Sponsors: By Senate Committee on Natural Resources, Parks & Shorelines (originally sponsored by Senators T. Sheldon, Oke and Jacobsen; by request of Department of Natural Resources).

Brief History:

Committee Activity:

Natural Resources: 3/28/01 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Replaces the phrases "timber" and "timber, fallen timber, stone, gravel, or other valuable materials" with the phrase valuable materials.–
- Provides the Department of Natural Resources (DNR) with the flexibility necessary to accept modern forms of payment security.
- Allows DNR to require performance security from contracting purchasers.
- Eliminates the requirement that DNR advertise proposed land sales in newspapers and provides them with the flexibility to advertise sales through modern mediums, such as the internet.
- Allows DNR to issue a pamphlet containing the appraised values of lands available for bid.
- Allows DNR to correct any contract entered into by mistake in order to prevent a contract from being held void.
- Allows the department to cancel any portion of a contract that can not be performed due to circumstances beyond the department's control.
- Allows the department to substitute valuable materials from another site in exchange for the valuable materials that are impracticable to remove.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 12 members: Representatives Doumit, Democratic Co-Chair; Sump, Republican Co-Chair; Pearson, Republican Vice Chair; Rockefeller, Democratic Vice Chair; Buck, G. Chandler, Edwards, Eickmeyer, Ericksen, Jackley, Murray and Pennington.

Staff: Jason Callahan (786-7117).

Background:

In 1982 the Legislature vested specific authority for DNR to sell timber and other valuable resources from state trust lands. The DNR sells a variety of resources from state trust lands, including timber, stone, and gravel. Sales contracts define the terms of payment and time lines for removal of the resources. Initial deposits for the materials are

required of the successful bidder at public auction. The initial deposit must be maintained until all contract obligations of the purchaser have been satisfied. Before any removal of timber or other material from state lands, the department may require advance payment from the purchaser, which is equal to or exceeds the value of the resources to be removed. Before valuable materials can be sold, the sale must be properly noticed so that the maximum number of potential buyers can be aware of the sale.

Summary of Amended Bill:

The process of selling valuable materials off of state trust lands by DNR is changed in various ways:

1. Clarifications in statute: In numerous sections of the RCW the phrases "timber" and "timber, fallen timber, stone, gravel, or other valuable materials" are replaced with the phrase valuable materials.– Valuable materials, as defined in current law, are any products or materials of value, such as forest products, forage, agricultural crops, stone, gravel, sand, and peat. Mineral, coal, gas, and petroleum products are not considered valuable materials. The clarification allows the DNR to sell and appraise all valuable materials on state lands, including fallen timber, logs, and other forest products.

Persons seeking to acquire a right of way for utility lines or roadways over state land must compensate the DNR for the value of all valuable materials, not just the value of standing timber and its reproduction.

2. Security: A purchaser must notify DNR before any operations take place on state land, as opposed to current law, which requires notification before any timber is cut, processed, or removed. Upon notification, DNR must require advance payment for the valuable materials or allow the purchaser to guarantee payment with adequate security. The security may be in the forms historically allowed by statute (bank letters of credit, payment bonds, or assignment of savings accounts) or may be in other forms determined by the department to be adequate security.

The DNR may also require additional performance securities from purchasers to guarantee compliance with contract provisions. Performance securities must equal or exceed the value of the work to be performed by the purchaser.

3) Notice requirements: DNR is no longer required to give notice of a sale in a newspaper of general circulation at least twice in the four week period leading up to the sale. The notice requirements for a land sale are posting notice at DNR's Olympia office, regional headquarters, and the office of the county auditor, and including the sale notice in a pamphlet. The pamphlet, containing the notice of sale and appraised value of the land and/or valuable materials, must be distributed free of charge at each DNR regional office and mailed to any requesting applicant. The Commissioner of Public

Lands is given the authority to publish the pamphlet's information in additional ways, including posting of the information on the internet.

4) Contracting: Contracts for sale, lease or transfer that are entered into by mistake or not in accordance with law are not automatically voided. The DNR has the authority to correct the mistake if maintaining the corrected contract is in the best interests of the affected trust or trusts.

The department is allowed to cancel any portion of a contract that can not be performed due to circumstances beyond the department's control. Market price fluctuations do not constitute an impracticable situation. The department may alternatively substitute valuable materials from another site in exchange for the valuable materials that are impracticable to remove. The substituted materials must belong to the same trust as the original materials and must be appraised no higher than the materials under the original contract. The values of the substituted materials are to be fixed at the contract's purchase price regardless of subsequent market changes. No substitution may be made without the purchaser's consent.

The DNR has the authority to extend for 40 years the time for the purchasers of valuable materials to remove the materials. Current law allows DNR to extend such time periods for 20 years.

5) Appraisals: "Appraisal" is defined as an estimate of the market value of land and valuable materials at the time of the sale offering. The appraisal must reflect DNR's best efforts to establish a reasonable market value for the purposes of setting a minimum bid. The purchaser of the appraised lands may not rely on the appraisal prepared by DNR for the purpose of deciding whether to make the purchase. All purchasers are required to conduct their own independent appraisals.

Amended Bill Compared to Substitute Bill:

The striker allows the department to cancel any portion of a contract that can not be performed due to circumstances beyond the department's control or substitute valuable materials from another site in exchange for the valuable materials that are impracticable to remove.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This bill allows DNR to modernize its sales and services; thus, increasing the profits to schools and other beneficiaries of state trust land. Savings will occur by lowering advertising costs, allowing the appraisal flexibility necessary to capture markets as they move, and lessen litigation by demanding performance securities and providing flexibility in the case of contractual mistakes.

Testimony Against: None.

Testified: Bruce Mackey and Jack Hulsey, Department of Natural Resources.