

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5862**

57th Legislature  
2001 Regular Session

Passed by the Senate April 17, 2001  
YEAS 48 NAYS 0

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**President of the Senate**

Passed by the House April 9, 2001  
YEAS 95 NAYS 0

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5862** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5862**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

**State of Washington                      57th Legislature                      2001 Regular Session**

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

READ FIRST TIME 02/27/01.

1            AN ACT Relating to improving the business practices associated with  
2 selling valuable materials on trust land; amending RCW 79.01.084,  
3 79.01.116, 79.01.124, 79.01.132, 79.01.160, 79.01.184, 79.01.188,  
4 79.01.204, 79.01.232, 79.01.240, 79.01.340, 79.01.392, 79.01.795,  
5 79.64.030, 79.64.040, and 79.64.050; and adding new sections to chapter  
6 79.01 RCW.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            **Sec. 1.** RCW 79.01.084 and 1982 1st ex.s. c 21 s 150 are each  
9 amended to read as follows:

10            The commissioner of public lands shall cause to be prepared, and  
11 furnish to applicants, blank forms of applications for the appraisal,  
12 transfer, and purchase of any state lands and the purchase of (~~timber,~~  
13 ~~fallen timber, stone, gravel, or other~~) valuable materials situated  
14 thereon, and for the lease of state lands(~~, which~~). These forms  
15 shall contain (~~such~~) instructions (~~as will~~) to inform and aid  
16 (~~intending~~) applicants (~~in making applications~~).

17            **Sec. 2.** RCW 79.01.116 and 1982 1st ex.s. c 21 s 152 are each  
18 amended to read as follows:

1       (1) In no case shall any lands granted to the state be offered for  
2 sale unless the same shall have been appraised by the board of natural  
3 resources within ninety days prior to the date fixed for the sale(~~(7~~  
4 ~~and in no case shall any other state lands, or any materials on any~~  
5 ~~state lands, be offered for sale unless the same shall have been~~  
6 ~~appraised by the commissioner of public lands within ninety days prior~~  
7 ~~to the date fixed for the sale))).~~

8       (2) For the sale of valuable materials from state land under this  
9 title, if the board of natural resources is required by law to appraise  
10 the sale, the board must establish a minimum appraisal value that is  
11 valid for a period of one hundred eighty days, or a longer period as  
12 may be established by resolution. The board may reestablish the  
13 minimum appraisal value at any time. For any valuable materials sales  
14 that the board is required by law to appraise, the board may by  
15 resolution transfer this authority to the commissioner of public lands.

16       (3) Where the board of natural resources has set a minimum  
17 appraisal value for a valuable materials sale, the commissioner of  
18 public lands may set the final appraisal value of valuable materials  
19 for auction, which must be equal to or greater than the board of  
20 natural resources' minimum appraisal value. The commissioner may also  
21 appraise any valuable materials sale not required by law to be approved  
22 by the board of natural resources.

23       **Sec. 3.** RCW 79.01.124 and 1982 1st ex.s. c 21 s 154 are each  
24 amended to read as follows:

25       (~~Timber, fallen timber, stone, gravel, or other~~) Valuable  
26 material situated upon state lands may be sold separate from the land,  
27 when in the judgment of the commissioner of public lands, it is for the  
28 best interest of the state so to sell the same(~~(7 and in case the~~  
29 ~~estimated amount of timber on any tract of state lands, shall exceed~~  
30 ~~one million feet to the quarter section, the timber shall be sold~~  
31 ~~separate from the land))). When application is made for the purchase of  
32 any valuable materials (~~(situated upon state lands, the same inspection~~  
33 ~~and report shall be had as upon an application for the appraisalment and~~  
34 ~~sale of such lands, and)), the commissioner of public lands shall  
35 appraise the value of the valuable materials (~~(applied for)~~) if the  
36 commissioner determines it is in the best interest of the state to  
37 sell. No (~~(timber, fallen timber, stone, gravel, or other)~~) valuable  
38 materials(~~(7)~~) shall be sold for less than the appraised value thereof.~~~~

1       **Sec. 4.** RCW 79.01.132 and 1999 c 51 s 1 are each amended to read  
2 as follows:

3       (1) When ~~((any timber, fallen timber, stone, gravel, or other))~~  
4 valuable materials on state lands ~~((is))~~ are sold separate from the  
5 land, ~~((it))~~ they may be sold as a lump sum sale or as a scale sale.  
6 Lump sum sales under five thousand dollars appraised value shall be  
7 paid for in cash on the day of sale. The initial deposit shall be  
8 maintained until all contract obligations of the purchaser are  
9 satisfied. However, all or a portion of the initial deposit may be  
10 applied as the final payment for the valuable materials in the event  
11 the department of natural resources determines that adequate security  
12 exists for the performance or fulfillment of any remaining obligations  
13 of the purchaser under the sale contract.

14       (2) The initial deposits required in RCW 79.01.204~~((,))~~ may not  
15 ~~((to))~~ exceed twenty-five percent of the actual or projected purchase  
16 price, but in the case of lump sum sales appraised at over five  
17 thousand dollars the initial deposit may not be less than five thousand  
18 dollars, and shall be made on the day of the sale~~((, and in the case~~  
19 ~~of)).~~ For those sales appraised below the amount specified in RCW  
20 79.01.200, the department of natural resources may require full cash  
21 payment on the day of sale.

22       (3) The purchaser shall notify the department of natural resources  
23 before any ~~((timber is cut and before removal or processing of any~~  
24 ~~valuable materials on the sale area, at which time))~~ operation takes  
25 place on the sale site. Upon notification, the department of natural  
26 resources ~~((may))~~ shall determine and require~~((, in the amount~~  
27 ~~determined by the department,))~~ advance payment for the cutting,  
28 removal, or processing~~((, and/or cutting))~~ of ~~((timber or other))~~ the  
29 valuable materials, ((or)) or may allow purchasers to guarantee payment  
30 by submitting as adequate security bank letters of credit, payment  
31 bonds, ((or)) assignments of savings accounts, assignments of  
32 certificates of deposit, or other methods acceptable to the department  
33 as adequate security. The amount of such advance payments and/or  
34 security shall be determined by the department and at all times equal  
35 or exceed the value of timber cut and other valuable materials  
36 processed or removed until paid for. ~~((The initial deposit shall be~~  
37 ~~maintained until all contract obligations of the purchaser are~~  
38 ~~satisfied: PROVIDED HOWEVER, That all or a portion of said initial~~  
39 ~~deposit may be applied as the final payment for said materials in the~~

1 event the department of natural resources determines that adequate  
2 security exists for the performance or fulfillment of any remaining  
3 obligations of the purchaser under the sale contract.))

4 (4) In all cases where ((~~timber, fallen timber, stone, gravel, or~~  
5 ~~other~~)) valuable materials ((~~is~~)) are sold separate from the land, the  
6 same shall revert to the state if not removed from the land within the  
7 period specified in the sale contract. ((~~Said~~)) The specified period  
8 shall not exceed five years from the date of the purchase thereof:  
9 PROVIDED, That the specified periods in the sale contract for stone,  
10 sand, fill material, or building stone shall not exceed ((~~twenty~~))  
11 thirty years((~~:- PROVIDED FURTHER, That~~)).

12 (5) In all cases where, in the judgment of the department of  
13 natural resources, the purchaser is acting in good faith and  
14 endeavoring to remove such materials, the department of natural  
15 resources may extend the time for the removal thereof for any period  
16 not exceeding ((~~twenty~~)) forty years from the date of purchase for the  
17 stone, sand, fill material, or building stone or for a total of ten  
18 years beyond the normal termination date specified in the original sale  
19 contract for all other material((~~7~~)). Extension of a contract is  
20 contingent upon payment to the state of a sum to be fixed by the  
21 department of natural resources, based on the estimated loss of income  
22 per acre to the state resulting from the granting of the extension  
23 ((~~but~~)). In no event may the extension payment be less than fifty  
24 dollars per extension, plus interest on the unpaid portion of the  
25 contract. The interest rate shall be fixed, from time to time, by rule  
26 adopted by the board of natural resources and shall not be less than  
27 six percent per annum. The applicable rate of interest as fixed at the  
28 date of sale ((and)), the maximum extension payment ((shall be set  
29 forth in the contract.)), and the method for calculating the unpaid  
30 portion of the contract upon which such interest shall be paid by the  
31 purchaser shall be set forth in the contract. The department of  
32 natural resources shall pay into the state treasury all sums received  
33 for such extension and the same shall be credited to the fund to which  
34 was credited the original purchase price of the material so sold.

35 ((~~However, 7~~)) (6) A direct sale of valuable materials may be sold to  
36 the applicant for cash at full appraised value without notice or  
37 advertising. The board of natural resources shall, by resolution,  
38 establish the value amount of a direct sale not to exceed twenty  
39 thousand dollars in appraised sale value, and establish procedures to

1 assure that competitive market prices and accountability will be  
2 guaranteed.

3 (7) The department may, in addition to any other securities,  
4 require a performance security to guarantee compliance with all  
5 contract requirements. The security is limited to those types listed  
6 in subsection (3) of this section. The value of the performance  
7 security will, at all times, equal or exceed the value of work  
8 performed or to be performed by the purchaser.

9 (8) Any time that the department of natural resources sells timber  
10 by contract that includes a performance bond, the department shall  
11 require the purchaser to present proof of any and all taxes paid prior  
12 to the release of the performance bond. Within thirty days of payment  
13 of taxes due by the timber purchaser, the county treasurer shall  
14 provide certified evidence of taxes paid, clearly disclosing the sale  
15 contract number.

16 (9) The provisions of this section apply unless otherwise provided  
17 by statute. The board of natural resources shall establish procedures  
18 to protect against cedar theft and to ensure adequate notice is given  
19 for persons interested in purchasing cedar.

20 **Sec. 5.** RCW 79.01.160 and 1959 c 257 s 15 are each amended to read  
21 as follows:

22 All sales of ~~((timber))~~ valuable materials upon state lands shall  
23 be made subject to the right, power, and authority of the commissioner  
24 of public lands to prescribe rules ~~((and regulations))~~ or procedures  
25 governing the manner of the sale and removal of the ~~((timber with a~~  
26 ~~view to the protection of the nonmerchantable timber against~~  
27 ~~destruction or injury by fire or from other causes, and))~~ valuable  
28 materials. Such ~~((rules or regulations))~~ procedures shall be binding  
29 ~~((upon the))~~ when contained within a purchaser's ~~((of the timber))~~  
30 contract for valuable materials and ~~((his))~~ apply to the purchaser's  
31 successors in interest and shall be enforced by the commissioner of  
32 public lands.

33 **Sec. 6.** RCW 79.01.184 and 1997 c 116 s 2 are each amended to read  
34 as follows:

35 When the department of natural resources shall have decided to sell  
36 any state lands or valuable materials thereon, or with the consent of  
37 the board of regents of the University of Washington, or by legislative

1 directive, shall have decided to sell any lot, block, tract, or tracts  
2 of university lands, or the (~~(timber, fallen timber, stone, gravel, or~~  
3 ~~ether)) valuable materials thereon, it shall be the duty of the  
4 department to (~~(forthwith))~~) fix the date, place, and time of sale, and  
5 no sale shall be had on any day which is a legal holiday.~~

6 The department shall give notice of the sale by advertisement  
7 published not less than two times during a four week period prior to  
8 the time of sale in at least one newspaper of general circulation in  
9 the county in which the whole, or any part of any lot, block, or tract  
10 of land to be sold, or the material upon which is to be sold is  
11 situated, and by (~~(causing))~~) posting a copy of (~~(said))~~) the notice (~~(to~~  
12 ~~be posted))~~) in a conspicuous place in the department's Olympia office  
13 (~~(and))~~), the region headquarters administering such sale, and in the  
14 office of the county auditor of such county(~~(, which))~~). The notice  
15 shall specify the place, date, and time of sale, the appraised value  
16 thereof, and describe with particularity each parcel of land to be  
17 sold, or from which valuable materials are to be sold(~~(, and))~~). In the  
18 case of valuable materials sales, the estimated volume (~~(thereof,))~~)  
19 will be identified and (~~(specify that))~~) the terms of sale will be  
20 (~~(posted))~~) available in the region headquarters and the department's  
21 Olympia office.

22 (~~(However,))~~) The advertisement is for informational purposes only,  
23 and under no circumstances does the information in the notice of sale  
24 constitute a warranty that the purchaser will receive the stated  
25 values, volumes, or acreage. All purchasers are expected to make their  
26 own measurements, evaluations, and appraisals.

27 A direct sale of valuable materials may be sold to the applicant  
28 for cash at full appraised value without notice or advertising. The  
29 board of natural resources shall, by resolution, establish the value  
30 amount of a direct sale not to exceed twenty thousand dollars in  
31 appraised sale value, and establish procedures to (~~(assure))~~) ensure  
32 that competitive market prices and accountability will be guaranteed.

33 **Sec. 7.** RCW 79.01.188 and 1982 1st ex.s. c 21 s 157 are each  
34 amended to read as follows:

35 The commissioner of public lands shall cause to be printed a list  
36 of all public lands, or valuable materials thereon, and the appraised  
37 value thereof, that are to be sold (~~(in the several counties of the~~  
38 ~~state, said lists))~~). This list should be published in a pamphlet form

1 to be issued at least four weeks prior to the date of any sale of the  
2 lands or valuable materials ((enumerated)) thereon(~~(, such lands and~~  
3 ~~materials to be listed under the name of the county wherein located, in~~  
4 ~~alphabetical order giving the appraised values, the character of the~~  
5 ~~same, and such other information as may be of interest to prospective~~  
6 ~~buyers. Said commissioner of public lands shall cause to be~~  
7 ~~distributed to the auditor of each county in the state a sufficient~~  
8 ~~number of such lists to supply the demands made upon them respectively~~  
9 ~~as reported by such auditors. And said county auditors shall keep the~~  
10 ~~list so furnished in a conspicuous place or receptacle on the counter~~  
11 ~~of the public office of their respective departments, and, when~~  
12 ~~requested so to do, shall mail copies of such lists to residents of~~  
13 ~~their counties)). The list should be organized by county and by  
14 alphabetical order, and provide sale information to prospective buyers.  
15 The commissioner of public lands shall retain for free distribution in  
16 his or her office and the ((~~district~~)) region offices sufficient copies  
17 of ((~~said lists~~)) the pamphlet, to be kept in a conspicuous place ((~~or~~  
18 ~~receptacle on the counter of the general office of the commissioner of~~  
19 ~~public lands, and the districts~~)), and, when requested so to do, shall  
20 mail copies of ((~~said lists~~)) the pamphlet as issued to any requesting  
21 applicant ((~~therefor~~)). ((~~Proof of publication of the notice of sale~~  
22 ~~shall be made by affidavit of the publisher, or person in charge, of~~  
23 ~~the newspaper publishing the same and proof of posting the notice of~~  
24 ~~sale and the receipt of the lists shall be made by certificate of the~~  
25 ~~county auditor which shall forthwith be sent to and filed with the~~  
26 ~~commissioner of public lands.)) The commissioner of public lands may  
27 seek additional means of publishing the information in the pamphlet,  
28 such as on the internet, to increase the number of prospective buyers.~~~~

29 **Sec. 8.** RCW 79.01.204 and 1982 c 27 s 2 are each amended to read  
30 as follows:

31 Sales by public auction under this chapter shall be conducted under  
32 the direction of the department of natural resources(~~(, by))~~ or its  
33 authorized representative ((~~or by the county auditor of the county in~~  
34 ~~which the sale is held~~)). The department or department's  
35 representative ((~~and the county auditor~~)) are hereinafter referred to  
36 as auctioneers. On or before the time specified in the notice of sale  
37 each bidder shall deposit with the auctioneer, in cash or by certified  
38 check, cashier's check, ((~~or postal~~)) money order payable to the order



1 of the department of natural resources, or by bid guarantee in the form  
2 of bid bond acceptable to the department, an amount equal to the  
3 deposit specified in the notice of sale. The deposit shall include a  
4 specified amount of the appraised price for the land or valuable  
5 materials offered for sale, together with any fee required by law for  
6 the issuance of contracts, deeds, or bills of sale. Said deposit may,  
7 when prescribed in notice of sale, be considered an opening bid of an  
8 amount not less than the minimum appraised price established in the  
9 notice of sale. The successful bidder's deposit will be retained by  
10 the auctioneer and the difference, if any, between the deposit and the  
11 total amount due shall on the day of the sale be paid in cash,  
12 certified check, cashier's check, bank draft, (~~((postal))~~) or money  
13 order, (~~((or by personal check))~~) made payable to the department. If a  
14 bid bond is used, the share of the total deposit due guaranteed by the  
15 bid bond shall, within ten days of the day of sale, be paid in cash,  
16 certified check, cashier's check, (~~((or postal))~~) money order, or other  
17 acceptable payment method payable to the department. Other deposits,  
18 if any, shall be returned to the respective bidders at the conclusion  
19 of each sale. The auctioneer shall deliver to the purchaser a  
20 memorandum of his or her purchase containing a description of the land  
21 or materials purchased, the price bid, and the terms of the sale. The  
22 auctioneer shall at once send to the department the cash, certified  
23 check, cashier's check, bank draft, (~~((postal))~~) money order, (~~((or))~~) bid  
24 guarantee, or other acceptable payment method received from the  
25 purchaser, and a copy of the memorandum delivered to the purchaser,  
26 together with such additional report of his or her proceedings with  
27 reference to such sales as may be required by the department.

28 **Sec. 9.** RCW 79.01.232 and 1927 c 255 s 58 are each amended to read  
29 as follows:

30 When (~~((timber, fallen timber, stone, gravel, or other))~~) valuable  
31 materials(~~((, shall have been))~~) are sold separate from the land and the  
32 purchase price is paid in full, the commissioner of public lands shall  
33 cause a bill of sale, signed by the commissioner and attested by the  
34 seal of his or her office, setting forth the time within which such  
35 material shall be removed, to be issued to the purchaser and to be  
36 recorded in the office of the commissioner of public lands, upon the  
37 payment of the fee provided for in this chapter.

1        NEW SECTION. Sec. 10. A new section is added to chapter 79.01 RCW  
2 to read as follows:

3        For the purposes of this title, "appraisal" means an estimate of  
4 the market value of land or valuable materials. The estimate must  
5 reflect the value based on market conditions at the time of the sale or  
6 transfer offering. The appraisal must reflect the department of  
7 natural resources' best effort to establish a reasonable market value  
8 for the purpose of setting a minimum bid at auction or transfer. A  
9 purchaser of state lands or valuable materials may not rely upon the  
10 appraisal prepared by the department of natural resources for purposes  
11 of deciding whether to make a purchase from the department. All  
12 purchasers are required to make their own independent appraisals.

13        **Sec. 11.** RCW 79.01.240 and 1982 1st ex.s. c 21 s 164 are each  
14 amended to read as follows:

15        Any sale, transfer, or lease of state lands (~~made by mistake, or~~  
16 ~~not in accordance with law, or obtained~~) in which the purchaser,  
17 transfer recipient, or lessee obtains the sale or lease by fraud or  
18 misrepresentation(~~(, shall be)~~) is void, and the contract of  
19 purchase(~~(,)~~) or lease(~~(, issued thereon,)~~) shall be of no effect(~~(,~~  
20 ~~and the holder of such contract, or lease, shall be required to~~  
21 ~~surrender the same to the department of natural resources, which,~~  
22 ~~except in the case of fraud on the part of the purchaser, or lessee,~~  
23 ~~shall cause the money paid on account of such surrendered contract, or~~  
24 ~~lease, to be refunded to the holder thereof, provided the same has not~~  
25 ~~been paid into the state treasury)). In the event of fraud, the  
26 contract, transferred property, or lease must be surrendered to the  
27 department of natural resources, but the purchaser, transfer recipient,  
28 or lessee may not be refunded any money paid on account of the  
29 surrendered contract, transfer, or lease. In the event that a mistake  
30 is discovered in the sale or lease of state lands, or in the sale of  
31 valuable materials on state lands, the department may take action to  
32 correct the mistake in accordance with RCW 79.01.740 if maintaining the  
33 corrected contract, transfer, or lease is in the best interests of the  
34 affected trust or trusts.~~

35        **Sec. 12.** RCW 79.01.340 and 1982 1st ex.s. c 21 s 171 are each  
36 amended to read as follows:

1 Any county or city or the United States of America or state agency  
2 desiring to locate, establish, and construct a road or street over and  
3 across any state lands of the state of Washington shall by resolution  
4 of the board of county commissioners of such county, or city council or  
5 other governing body of such city, or proper agency of the United  
6 States of America, or state agency, cause to be filed in the office of  
7 the department of natural resources a petition for a right of way for  
8 such road or street, setting forth the reasons for the establishment  
9 thereof, accompanied by a duly attested copy of a plat made by the  
10 county or city engineer or proper agency of the United States of  
11 America, or state agency, showing the location of the proposed road or  
12 street with reference to the legal subdivisions, or lots and blocks of  
13 the official plat, or the lands, over and across which such right of  
14 way is desired, the amount of land to be taken and the amount of land  
15 remaining in each portion of each legal subdivision or lot or block  
16 bisected by such proposed road or street.

17 Upon the filing of such petition and plat the department of natural  
18 resources, if deemed for the best interest of the state to grant the  
19 petition, shall cause the land proposed to be taken to be inspected and  
20 shall appraise the value of ~~((any timber))~~ the land and valuable  
21 materials thereon and notify the petitioner of such appraised value.

22 If there ~~((be))~~ are no ~~((timber))~~ valuable materials on the  
23 proposed right of way, or upon the payment of the appraised value of  
24 ~~((any timber))~~ the land and valuable materials thereon, to the  
25 department of natural resources in cash, or by certified check drawn  
26 upon any bank in this state, or ~~((postal))~~ money order, except for all  
27 rights of way granted to the department of natural resources on which  
28 the ~~((timber))~~ valuable materials, if any, shall be sold at public  
29 auction or by sealed bid, the department may approve the plat filed  
30 with the petition and file and enter the same in the records of his or  
31 her office, and such approval and record shall constitute a grant of  
32 such right of way from the state.

33 **Sec. 13.** RCW 79.01.392 and 1961 c 73 s 8 are each amended to read  
34 as follows:

35 Upon the filing of the plat and field notes, as provided in RCW  
36 79.01.388, the land applied for and the ~~((standing timber and/or~~  
37 ~~reproduction))~~ valuable materials on the right of way applied for, and  
38 the marked danger trees to be felled off the right of way, if any, and

1 the improvements included in the right of way applied for, if any,  
2 shall be appraised as in the case of an application to purchase state  
3 lands. Upon full payment of the appraised value of the land applied  
4 for, or upon payment of an annual rental when the department of natural  
5 resources deems a rental to be in the best interests of the state, and  
6 upon full payment of the appraised value of the (~~standing timber,~~  
7 ~~reproduction,~~) valuable materials and improvements, if any, the  
8 commissioner of public lands shall issue to the applicant a certificate  
9 of the grant of such right of way stating the terms and conditions  
10 thereof and shall enter the same in the abstracts and records in his or  
11 her office, and thereafter any sale or lease of the lands affected by  
12 such right of way shall be subject to the easement of such right of  
13 way. Should the corporation, company, association, individual, state  
14 agency, political subdivision of the state, or the United States of  
15 America, securing such right of way ever abandon the use of the same  
16 for a period of sixty months or longer for the purposes for which it  
17 was granted, the right of way shall revert to the state, or the state's  
18 grantee.

19 **Sec. 14.** RCW 79.01.795 and 1987 c 126 s 2 are each amended to read  
20 as follows:

21 When the department finds (~~timber~~) valuable materials on state  
22 land that (~~is~~) are damaged by fire, wind, flood, or from any other  
23 cause, it shall determine if the (~~sale~~) salvage of the damaged  
24 (~~timber~~) valuable materials is in the best interest of the trust for  
25 which the land is held. If (~~selling~~) salvaging the (~~timber~~)  
26 valuable materials is in the best interest of the trust, the department  
27 shall proceed to offer the (~~timber~~) valuable materials for sale  
28 (~~within a period not to exceed seven months from the date of first~~  
29 ~~identifying the damaged timber~~). The valuable materials, when offered  
30 for sale, must be sold in the most expeditious and efficient manner as  
31 determined by the department. In determining if the sale is in the  
32 best interest of the trust the department shall consider the net value  
33 of the (~~timber~~) valuable materials and relevant elements of the  
34 physical and social environment. (~~If selling the timber is not in the~~  
35 ~~best interest of the trust, the department shall not offer it for sale~~  
36 ~~until such time as in the department's determination it is in the~~  
37 ~~trust's best interest.~~

1       ~~If elements of the physical or social environment extend the time~~  
2 ~~required to prepare the timber for sale beyond seven months from the~~  
3 ~~date of first identifying the damaged timber, the department shall~~  
4 ~~prepare the timber for sale at the earliest time practicable.))~~

5       **Sec. 15.** RCW 79.64.030 and 1999 c 279 s 1 are each amended to read  
6 as follows:

7       Funds in the account ~~((derived))~~ from the ~~((gross proceeds of))~~  
8 moneys received from leases, sales, contracts, licenses, permits,  
9 easements, and rights of way issued by the department and affecting  
10 school lands, university lands, scientific school lands, normal school  
11 lands, capitol building lands, or institutional lands shall be pooled  
12 and expended by the department solely for the purpose of defraying the  
13 costs and expenses necessarily incurred in managing and administering  
14 all of the trust lands enumerated in this section. Such funds may be  
15 used for similar costs and expenses in managing and administering other  
16 lands managed by the department provided that such expenditures that  
17 have been or may be made on such other lands shall be repaid to the  
18 resource management cost account together with interest at a rate  
19 determined by the board of natural resources.

20       Costs and expenses necessarily incurred in managing and  
21 administering agricultural college lands shall not be deducted from  
22 proceeds ~~((derived))~~ received from the sale of such lands or from the  
23 sale of resources that are part of the lands. Costs and expenses  
24 incurred in managing and administering agricultural college trust lands  
25 shall be funded by appropriation under RCW 79.64.090.

26       An accounting shall be made annually of the accrued expenditures  
27 from the pooled trust funds in the account. In the event the  
28 accounting determines that expenditures have been made from moneys  
29 ~~((derived))~~ received from trust lands for the benefit of other lands,  
30 such expenditure shall be considered a debt and an encumbrance against  
31 the property benefitted, including property held under chapter 76.12  
32 RCW. The results of the accounting shall be reported to the  
33 legislature at the next regular session. The state treasurer is  
34 authorized, upon request of the department, to transfer funds between  
35 the forest development account and the resource management cost account  
36 solely for purpose of repaying loans pursuant to this section.

1       **Sec. 16.** RCW 79.64.040 and 1999 c 279 s 2 are each amended to read  
2 as follows:

3       The board shall determine the amount deemed necessary in order to  
4 achieve the purposes of this chapter and shall provide by rule for the  
5 deduction of this amount from the (~~gross proceeds of~~) moneys received  
6 from all leases, sales, contracts, licenses, permits, easements, and  
7 rights of way issued by the department and affecting public lands,  
8 provided that no deduction shall be made from the proceeds from  
9 agricultural college lands. Moneys received as deposits from  
10 successful bidders, advance payments, and security under RCW 79.01.132  
11 and 79.01.204 prior to December 1, 1981, which have not been subjected  
12 to deduction under this section are not subject to deduction under this  
13 section. The deductions authorized under this section shall in no  
14 event exceed twenty-five percent of the (~~total sum~~) moneys received  
15 by the department in connection with any one transaction pertaining to  
16 public lands other than second class tide and shore lands and the beds  
17 of navigable waters, and fifty percent of the (~~total gross proceeds~~)  
18 moneys received by the department pertaining to second class tide and  
19 shore lands and the beds of navigable waters.

20       **Sec. 17.** RCW 79.64.050 and 1961 c 178 s 5 are each amended to read  
21 as follows:

22       All deductions from (~~gross proceeds~~) moneys received made in  
23 accordance with RCW 79.64.040 shall be paid into the account and the  
24 balance shall be paid into the state treasury to the credit of the fund  
25 otherwise entitled to the proceeds.

26       NEW SECTION. **Sec. 18.** A new section is added to chapter 79.01 RCW  
27 to read as follows:

28       (1) In the event that the department of natural resources  
29 determines that regulatory requirements or some other circumstance  
30 beyond the control of both the department and the purchaser has made a  
31 valuable materials contract wholly or partially impracticable to  
32 perform, the department may cancel any portion of the contract which  
33 could not be performed. In the event of such a cancellation, the  
34 purchaser shall not be liable for the purchase price of any portions of  
35 the contract so canceled. Market price fluctuations shall not  
36 constitute an impracticable situation for valuable materials contracts.

1           (2) Alternatively, and notwithstanding any other provision in this  
2 title, the department of natural resources may substitute valuable  
3 materials from another site in exchange for any valuable materials  
4 which the department determines have become impracticable to remove  
5 under the original contract. Any substituted valuable materials must  
6 belong to the identical trust involved in the original contract, and  
7 the substitute materials shall be determined by the department of  
8 natural resources to have an appraised value that is not greater than  
9 the valuable materials remaining under the original contract. The  
10 substitute valuable materials and site shall remain subject to all  
11 applicable permitting requirements and the state environmental policy  
12 act, chapter 43.21C RCW, for the activities proposed at that site. In  
13 any such substitution, the value of the materials substituted shall be  
14 fixed at the purchase price of the original contract regardless of  
15 subsequent market changes. Consent of the purchaser shall be required  
16 for any substitution under this section.

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