

HOUSE BILL REPORT

SB 5042

As Passed House - Amended:

April 9, 2003

Title: An act relating to the department of natural resources' contractual authority.

Brief Description: Authorizing the department of natural resources to enter contracts that indemnify another party against loss or damage.

Sponsors: By Senators T. Sheldon, Morton and Fraser; by request of Commissioner of Public Lands.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/25/03, 4/2/03 [DPA].

Floor Activity:

Passed House - Amended: 4/9/03, 92-0.

<p style="text-align: center;">Brief Summary of Bill (As Amended by House)</p> <ul style="list-style-type: none">· Provides the Department of Natural Resources with the authority to indemnify a contracting party against loss or damage.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Staff: Jason Callahan (786-7117).

Background:

The Department of Natural Resources (DNR), like many state agencies, is authorized to enter into contractual relationships with private individuals. The DNR's contractual authority includes the ability to enter into contracts for real estate sales and for the sales of valuable materials from state lands. Some state agencies, including the Department of

Agriculture, the Department of Corrections, and the Department of Transportation, have the express authority to indemnify parties to a contract from liability. The DNR does not have this express authority.

The Legislature has decided that certain indemnification clauses in contracts are against public policy, and are therefore void. These include contract terms that indemnify a party against his or her own negligence in contracts that relate to the construction, alteration, or repair of an improvement attached to real estate.

Summary of Amended Bill:

The DNR has the discretionary authority to indemnify a contracting party against loss or damage. The authority does not allow for the indemnification of others against liability for negligence related to the construction or maintenance of structures or improvements to real estate.

The DNR is required to indemnify any third party that does not receive a direct benefit from a right of way or easement contract.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Private parties routinely indemnify each other, and the DNR should have the same ability. Indemnification is a good business practice. The DNR and private landowners have been negotiating a process to allow each other to access land, and this bill is a key part in that process. The DNR can accept indemnification, so it should also be able to offer it as well.

Testimony Against: None.

Testified: Bill Garvin, Washington Forest Protection Association; and Bruce Mackey, Department of Natural Resources.