

# HOUSE BILL REPORT

## SB 5076

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### As Passed House:

April 9, 2003

**Title:** An act relating to the highest responsible bidder for sales of valuable materials from state-owned aquatic lands.

**Brief Description:** Determining a "highest responsible bidder" for valuable materials from state-owned aquatic lands.

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

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 3/25/03, 4/1/03 [DP].

#### Floor Activity:

Passed House: 4/9/03, 90-2.

### Brief Summary of Bill

- Allows the Department of Natural Resources to consider, before awarding a contract for the sale of valuable materials, whether a high bidder has within the past five years failed to execute other sales in which he or she was the high bidder.

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 12 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, McDermott, Orcutt, Quall and Sump.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hunt.

**Staff:** Jason Callahan (786-7117).

### Background:

The Legislature vested specific authority for the Department of Natural Resources (DNR) to sell timber and other valuable resources from state lands. The DNR sells a variety of resources from state lands, including stone, gravel, and geoducks. Before valuable materials can be sold, the sale must be properly noticed so that the maximum number of potential buyers are aware of the pending sale.

Most sales conducted by the DNR must be done at public auction and offered to the highest responsible bidder. However, the DNR does have the authority to offer a direct sale without notice or advertising for sales appraised at \$20,000 or less. Direct sales may only go forward after the DNR has established procedures that ensure competitive market prices and accountability.

Generally, sales are awarded to the highest responsible bidder; however, there is an enumerated list of factors, other than bid price, that the DNR may consider before awarding a sales contract. These include the bidder's ability to perform the contract, whether the bidder has previously complied with the terms of past contracts, whether the bidder has been convicted of a crime related to public lands, and whether the bidder is controlled by, or will subcontract with, bidders that are not responsible. If the DNR finds that the high bidder meets any of these criteria, it can offer the sale to the next highest bidder, or cancel the sale altogether.

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**Summary of Bill:**

In addition to the final bid price, the DNR is allowed to consider whether a bidder for a sale of valuable materials has in the past five years failed to complete a sale that he or she was awarded. Failure to complete a sale includes not entering into the resulting contract, or not paying the difference between the deposit and the total amount due. If the DNR determines that the apparent high bidder fits this description, it may award the sale to the next responsible bidder or reject all bids. The DNR may only consider contract failures that occurred after December 31, 2003.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The state has had problems in the past with the geoduck fishery. High bidders were awarded contracts and then did not complete the harvest. This bill gives the DNR the flexibility it needs in choosing which bidders are awarded a contract. This bill would allow the DNR to lower its minimum non-refundable bid deposit, which would

allow more bidders to enter into the auctions.

The language of the bill is discretionary in nature, so that the DNR does not have to cancel the bid of one who acted in good faith, and it incorporates suggestions made by the industry.

**Testimony Against:** The language of the bill is too vague for comfort. More details are needed so that auction bidders can know exactly what behavior is grounds for bid cancellation. The language should also be mandatory, so that all bidders know that they are receiving the same treatment. The DNR already has too much discretion, and there is no way to appeal their decisions.

**Testified:** (In support) Leigh Espy, Department of Natural Resources.

(Opposed) Casey Baker, Sea World Fisheries and Evergreen, Inc.; and Brad Nelson, Nelson Alaska Seafood Company.