

# SENATE BILL REPORT

## HB 1491

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As Reported by Senate Committee On:  
Agriculture, Water, Natural Resources & Parks, March 11, 2021

**Title:** An act relating to rights-of-way for the transport of timber, minerals, stone, sand, gravel, or other valuable materials.

**Brief Description:** Concerning the rights-of-way for the transport of timber, minerals, stone, sand, gravel, or other valuable materials.

**Sponsors:** Representatives Orcutt, Fitzgibbon and Lekanoff; by request of Department of Natural Resources.

**Brief History:** Passed House: 2/25/21, 96-1.

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 3/11/21, 3/11/21 [DP].

### Brief Summary of Bill

- Provides that the Department of Natural Resources is not required to issue a right-of-way certificate for right-of-way applications over lands in which the federal government claims the exclusive right to grant an easement or right-of-way.

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## SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** Do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Rolfes, Short and Stanford.

**Staff:** Karen Epps (786-7424)

**Background:** The Department of Natural Resources (DNR) manages a number of different

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categories of land, each for a specific purpose and under different management requirements. These include approximately 3 million acres of federally-granted lands and state forest lands, which DNR manages to support common schools, counties, and other public institutions.

If someone engaged in the business of logging, quarrying, mining or removing sand, gravel, or other valuable materials from land needs a right-of-way to transport or move timber, minerals, stone, sand, gravel, or other valuable materials across lands managed by DNR, the person must file a written application with DNR. Upon receipt of the application, DNR must first appraise any damages or diminution to the value of land caused by the use of such right-of-way, including the value of any timber affected by the right-of-way, and must then notify the applicant of that appraisal. Once the applicant has paid the appraised value identified by DNR, DNR then issues a right-of-way certificate to the applicant that describes the terms and conditions upon which the right-of-way is granted.

**Summary of Bill:** The obligation of DNR to issue a right-of-way certificate does not apply to an application for a right-of-way over land in which the federal government claims the exclusive right to grant an easement or right-of-way to third parties over such land. This exception does not apply where DNR disputes the claim by the federal government. This exception may not be deemed an acknowledgement that the federal government holds any such exclusive granting rights.

**Appropriation:** None.

**Fiscal Note:** Available.

**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:** PRO: This bill is intended to remove legal risk to the state while ensuring that DNR can continue to provide access across state trust lands for resource management. There are areas of the state where DNR has granted easement to the U.S. Forest Service (USFS) that then typically becomes part of the USFS road network. On those roads, the USFS has control over granting rights, so DNR cannot grant access on those roads. The risk for the state is if a party demands DNR grant access, DNR would be required to grant access in a separate location, potentially parallel to an existing road, because DNR cannot grant access to the USFS road network. DNR has stopped granting easements to USFS for over a decade because of this risk and in turn USFS has stopped granting easements to DNR. Removing this legal barrier will help DNR.

**Persons Testifying:** PRO: Duane Emmons, Department of Natural Resources.

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