

# HOUSE BILL REPORT

## SHB 1249

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### As Passed House:

February 24, 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 House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Rockefeller, Schoesler, Orcutt and Linville; by request of Commissioner of Public Lands).

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 2/4/03, 2/11/03 [DPS].

#### Floor Activity:

Passed House: 2/24/03, 96-0.

### Brief Summary of Substitute Bill

- Provides the Department of Natural Resources (DNR) with the discretionary authority to indemnify a contracting party against loss or damage.
- Requires the DNR to indemnify any third party that does not receive a direct benefit from a right-of-way or easement contract.

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. 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, alternation, or repair of an improvement attached to real estate.

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**Summary of Substitute 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.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** The contract authority of the DNR is limited by the Legislature, and the Legislature has not allowed the DNR to indemnify contract parties in the past. This means that the state cannot indemnify private landowners for the risks that the contracts present. Many easements are being denied by landowners because the DNR cannot offer indemnification.

The bill promotes economic viability with public-private partnerships and is the result of stakeholder discussion. The bill is based on indemnification authority granted to other state agencies.

**Testimony Against:** None.

**Testified:** Howard Thronson, Washington State Department of Natural Resources; and

Bill Garvin, Washington Forest Protection Association.