

SENATE BILL REPORT

SHB 1249

As Reported By Senate Committee On:
Natural Resources, Energy & Water, March 21, 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: 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: Natural Resources, Energy & Water: 3/21/03 [DP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Fraser, Hargrove and Regala.

Staff: Evan Sheffels (786-7486)

Background: Contracts, particularly real property contracts such as easements, leases, or purchase and sale agreements, commonly contain indemnification clauses to protect a party to the contract from liability for costs, risks, and third-party claims arising from the agreement.

The Department of Natural Resources (DNR) can currently require contracting parties to protect or indemnify the agency from liability. DNR is not, however, authorized to protect others from liability. Agency staff report that other parties have refused to enter into contracts with DNR because the agency cannot offer sufficient or reciprocal protections against risk.

The Departments of Agriculture, Corrections, and Transportation currently have express authority to indemnify others.

Summary of Bill: DNR is granted the discretionary authority to indemnify a contracting party against loss or damage. The department is required to indemnify a private landowner that does not receive a direct benefit from a right of way or easement contract to cross private land for forest management activities.

DNR is not authorized to indemnify others against liability for negligence related to the construction or maintenance of structures or improvements to real estate.

Appropriation: None.

Fiscal Note: Requested on March 16, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The authority to indemnify others will help DNR compete in the marketplace. Some landowners are hesitant to enter easement and other contractual agreements with DNR because DNR does not currently have the authority to indemnify them against loss. This bill is especially important in the context of negotiating easement exchanges or mutual easements between DNR and private landowners. This would help DNR and private landowners work out agreements that fairly apportion risk.

Testimony Against: None.

Testified: Bruce Mackey, DNR (pro).