

# SENATE BILL REPORT

## SB 5042

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As Passed Senate, March 17, 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:** Senators T. Sheldon, Morton and Fraser; by request of Commissioner of Public Lands.

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 1/16/03, 1/29/03 [DP].  
Passed Senate: 3/17/03, 48-1.

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### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

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**Majority Report:** Do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Fraser, Hale, Hargrove, Honeyford, Oke 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 a 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 reciprocal protections against risk.

The Departments of Agriculture, Corrections, and Transportation can currently indemnify others.

**Summary of Bill:** The Department of Natural Resources (DNR) is granted discretionary authority to indemnify other contracting parties against loss or damages. DNR is not authorized to indemnify others against liability for negligence related to construction, alteration or improvement of structures or improvements attached to real estate.

**Appropriation:** None.

**Fiscal Note:** Available.

**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. The current lack of this common contractual tool has hindered DNR's ability to make cost-effective business decisions. This bill is especially important in the context of negotiating easement exchanges or mutual easements between DNR and private landowners, as well as shared road use and right-of-way issues. This would help private landowners work out agreements with DNR that fairly apportion risks.

**Testimony Against:** None.

**Testified:** PRO: Bruce Mackey, DNR; Bill Garvin, WFPA.

**House Amendment(s):** The department is required to indemnify a private landowner when that landowner does not receive a direct benefit from a right of way or easement contract to cross private land for forest management activities.