

HOUSE BILL 169

Introduced by Thoft, et al.

1/14	Introduced
1/14	Referred to Business & Economic Development
1/15	First Reading
1/15	Fiscal Note Requested
1/21	Fiscal Note Received
1/22	Fiscal Note Printed
1/25	Hearing
2/21	Committee Report--Bill Passed as Amended
2/22	Revised Fiscal Note Requested
2/23	2nd Reading Passed
2/25	Revised Fiscal Note Received
2/26	3rd Reading Passed
	Transmitted to Senate
2/27	First Reading
2/27	Referred to Business & Industry
3/08	Revised Fiscal Note Printed
3/15	Hearing
3/18	Committee Report--Bill Concurred as Amended
3/21	2nd Reading Concur Motion Failed
3/21	2nd Reading Indefinitely Postponed

1 HOUSE BILL NO. 169
 2 INTRODUCED BY Theft Squad Sandy Park Clarke
 3 Lucille King
 4 A BILL FOR AN ACT ENTITLED: AN ACT CREATING A TIMBER
 5 SCALING PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; REQUIRING
 6 CERTAIN UNIFORM TIMBER SCALING PRACTICES; REQUIRING A CHECK
 7 OF TIMBER SCALING PRACTICES; CREATING A FUND FOR PROGRAM
 8 COSTS; AUTHORIZING TIMBER SCALING FEES; ESTABLISHING A CIVIL
 9 PENALTY FOR VIOLATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE
 10 DATE."
 11

STATEMENT OF INTENT

12 A statement of intent is required for this bill to
 13 provide guidance to the department of commerce concerning
 14 the adoption of rules to ensure accurate and consistent
 15 timber scaling practices in Montana. The legislature directs
 16 the department of commerce to adopt rules to periodically
 17 monitor timber scaling and to provide assistance to timber
 18 harvesters with complaints regarding timber scaling. The
 19 frequency of scaling checks must be sufficient to act as a
 20 deterrent to inaccurate and inconsistent scaling, and
 21 equally important, the scaling check program must address
 22 the concerns of those whose livelihoods depend on timber
 23 scaling. Additionally, the legislature recognizes that
 24 funding of the timber scaling program is crucial to
 25



1 realizing the goals of this bill and further directs the
 2 department to establish and collect appropriate and
 3 reasonable fees for timber scaling program administration.
 4

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. Section 1. Short title. [Sections 1
 6 through 10] may be cited as the "Timber Scaling Act".
 7

8 NEW SECTION. Section 2. Purpose. The purpose of
 9 [sections 1 through 10] is to establish a timber scaling
 10 program within the department to ensure accurate and
 11 consistent measurement of timber harvested in Montana.

12 NEW SECTION. Section 3. Definitions. As used in
 13 [sections 1 through 10], the following definitions apply:

14 (1) "Department" means the department of commerce
 15 created in 2-15-1801.

16 (2) "Gross scale" means the amount of timber measured
 17 before deducting for defects in accordance with the National
 18 Forest Log Scaling Handbook.

19 (3) "National Forest Log Scaling Handbook" means the
 20 timber scaling handbook published by the United States
 21 department of agriculture--forest service.

22 (4) "Net scale" means the amount of timber measured
 23 after deducting for defects in accordance with the National
 24 Forest Log Scaling Handbook.

25 (5) "Scale" means the method of measuring timber,

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1 including but not limited to any method to determine weight
2 or board feet.

3 (6) "Timber scaling fund" means the fund established in
4 [section 10].

5 NEW SECTION. Section 4. Timber purchase contract
6 notification. (1) A purchaser of timber harvested in Montana
7 shall notify the department of all its purchase contracts.
8 The notification must include the:

- 9 (a) name of the timber harvester;
- 10 (b) amount of timber under contract;
- 11 (c) location of the harvest;
- 12 (d) harvest dates;
- 13 (e) delivery location; and
- 14 (f) type of scale to be used by the purchaser.

15 (2) The department shall assign each contract a state
16 purchase contract number and notify the timber purchaser of
17 that number. All future correspondence regarding that
18 contract must reference the state purchase contract number.

19 NEW SECTION. Section 5. Mandatory scaling --
20 information required by department. (1) All timber harvested
21 in Montana and delivered to a purchaser in Montana must be
22 scaled. Regardless of the specific scaling method, all
23 scaling must comply with the National Forest Log Scaling
24 Handbook when applicable.

25 (2) Every 2 weeks or more frequently as determined by

1 the department, each timber purchaser shall forward the
2 following information to the department:

- 3 (a) state purchase contract numbers, as provided for in
4 [section 4], for all delivered timber;
- 5 (b) the delivery site;
- 6 (c) load numbers and the amount of timber scaled in
7 each load; and
- 8 (d) the scaler's name and employer.

9 NEW SECTION. Section 6. State scaling check. (1) The
10 department shall check timber scaling practices in Montana
11 to ensure accurate and consistent scaling. Using the
12 information provided by the timber purchaser under [section
13 4], the department shall identify timber harvests to be
14 checked.

15 (2) The department shall conduct a gross scale of
16 timber at the harvest site prior to the loading of the
17 timber for transportation to the delivery site. The
18 department may also conduct a net scale of timber.

19 (3) The department shall note the following information
20 for each load checked:

- 21 (a) the state purchase contract number;
- 22 (b) the load number; and
- 23 (c) the scale as determined by the department and
24 whether the scale is net or gross.

25 (4) Using the information provided by the timber

1 purchaser under [section 5], the department shall compare
2 the department timber scale to the purchaser timber scale.

3 (5) A discrepancy in favor of the timber purchaser of
4 greater than 2% for a gross scale or 5% for a net scale is a
5 violation of [sections 1 through 10].

6 NEW SECTION. **Section 7. Timber harvester complaints.**

7 (1) The department shall give due weight and consideration
8 to comments or complaints it receives from timber harvesters
9 regarding inaccurate scaling. The department may select a
10 specific harvest location or a specific timber purchaser for
11 a scaling check, based on the comments and complaints
12 received.

13 (2) The department shall keep the identity of a person
14 making a comment or complaint confidential at the request of
15 that person.

16 (3) The department shall answer in writing each comment
17 or complaint received regarding the department's planned
18 action in response to the comment or complaint.

19 NEW SECTION. **Section 8. Civil penalties.** (1) A person

20 who violates a provision of [sections 1 through 10], a rule
21 adopted under [sections 1 through 10], or an order of the
22 department is subject to a civil penalty not to exceed
23 \$20,000 a violation. Each timber load in violation of
24 [sections 5 and 6] constitutes a separate violation.

25 (2) The department may institute and maintain in the

1 name of the state enforcement proceedings under this
2 section. Upon request of the department, the attorney
3 general or the county attorney of the county in which the
4 timber was harvested or in which the timber was delivered
5 shall petition the district court to impose, assess, and
6 recover the civil penalty.

7 (3) All penalties recovered under this section must be
8 deposited in the timber scaling fund.

9 NEW SECTION. **Section 9. Timber scaling fees.** To

10 implement [sections 1 through 10], the department may assess
11 and collect reasonable fees from the timber harvester and
12 the timber purchaser named in each timber purchase contract.
13 Any fees assessed must be collected equally from both the
14 timber harvester and the timber purchaser. All collected
15 fees must be deposited in the timber scaling fund.

16 NEW SECTION. **Section 10. Timber scaling fund.** (1)

17 There is a timber scaling fund in the state special revenue
18 fund established in 17-2-102.

19 (2) There is deposited in the timber scaling fund:

20 (a) all revenue from the timber scaling fees provided
21 for in [section 9];

22 (b) money received by the department in the form of
23 gifts, grants, reimbursements, or appropriations, from any
24 source, intended to be used for the purposes of the timber
25 scaling fund;

1 (c) money appropriated or loaned to the timber scaling
2 fund by the legislature;

3 (d) penalties collected under [section 8]; and

4 (e) except as provided in subsection (4)(b), all
5 interest earned on the money in the timber scaling fund.

6 (3) The timber scaling fund may be used only:

7 (a) to administer [sections 1 through 10], including
8 payment of department expenses associated with
9 administration; and

10 (b) for repayment of a loan made under subsection (4)
11 plus interest earned on the loan.

12 (4) (a) The legislature may appropriate to the timber
13 scaling fund repayable loans as necessary to implement the
14 provisions of [sections 1 through 10]. The outstanding total
15 of repayable loans may not exceed the amount the department
16 estimates will be received by the timber scaling fund from
17 timber scaling fees during the next 24 months.

18 (b) Loans to the timber scaling fund must be repaid and
19 interest earned on loans must be paid to the general fund at
20 a time determined by the department. However, all loans to
21 the timber scaling fund plus interest earned on loans must
22 be repaid on or before December 31, 1997.

23 NEW SECTION. Section 11. Severability. If a part of
24 [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the part
2 remains in effect in all valid applications that are
3 severable from the invalid applications.

4 NEW SECTION. Section 12. Effective date. [This act] is
5 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0169, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a timber scaling program within the Department of Commerce; requiring certain uniform timber scaling practices; requiring a check of timber scaling practices; creating a fund for program costs; authorizing timber scaling fees; establishing a civil penalty for violations; and providing an immediate effective date.

ASSUMPTIONS:

Department of Commerce:

1. Timber buyers will notify the Department of Commerce of all timber purchase contracts. Approximately 2,200 timber purchase contracts are executed each year. Approximately 1,150,000 thousand board feet (MBF) of timber is harvested each year from public and private land within the State of Montana.
2. The Department of Commerce will assess and collect reasonable fees from the timber harvester and the timber purchaser named in a timber purchase contract. The fee will be based on the total cost to administer the program less unencumbered, excess revenues from previous years. In FY92 the timber scaling fee will be approximately \$.40 per MBF. In FY93 the timber scaling fee will be approximately \$.32 per MBF.
3. The Department of Commerce would need to create a special bureau. The bureau would require one bureau chief, one field supervisor, six field scalers, and one secretary.
4. The operating costs of the new bureau are based on the executive budget recommendation for the Weights and Measures Bureau of the Department of Commerce which is similar to the size and purpose of the proposed new bureau.

Department of Justice:


5. The Department of Commerce will ask the attorney general to litigate violations of the bill and collect any civil penalties. The Department of Justice estimates the volume and expertise required to litigate violations of the proposed bill would require an additional attorney plus relating operating costs and equipment.


Department of State Lands and School Trust:

6. DSL will be involved in drafting the rules and operating procedures for the new program which will cost DSL approximately \$3,000 in one-time expenses. The expenses are included in the Department of Commerce operating costs.
7. The fees will increase the operating costs of both timber harvesters and timber purchasers, who will pass on the costs to the state by paying less for the timber.
8. The state will harvest approximately 45,000 MBF annually and the school trust will earn about \$18,000 less in FY92 and \$14,400 less in FY93.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR 1-19-91 DATE
Office of Budget and Program Planning


BOB TROFT, PRIMARY SPONSOR 1-22-91 DATE

Fiscal Note for HB0169, as introduced.

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FISCAL IMPACT:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
<u>Dept of Commerce:</u>						
FTE	0.00	9.00	9.00	0.00	9.00	9.00
Personal Services	0	229,711	229,711	0	234,394	234,394
Operating Costs	0	88,301	88,301	0	82,461	82,461
Equipment	0	90,943	90,943	0	0	0
Total	0	408,955	408,955	0	316,855	316,855
<u>Funding:</u>						
State Special (02)	0	408,955	408,955	0	316,855	316,855
<u>Ending Balance:</u>						
	0	3,945	3,945	0	2,740	2,740
<u>Dept. of Justice:</u>						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	41,600	41,600	0	43,600	43,600
Operating Costs	0	3,000	3,000	0	3,000	3,000
Equipment	0	2,500	2,500	0	0	0
Total	0	47,100	47,100	0	46,600	46,600
<u>Funding:</u>						
State Special (02)	0	47,100	47,100	0	46,600	46,600
<u>Revenues:</u>						
Timber Scaling Fees (02)	0	460,000	460,000	0	362,250	362,250
School Trust (09)	0	(18,000)	(18,000)	0	(14,400)	(14,400)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

For each \$.01 per MBF of scaling fees, deposits to the school trust will decrease approximately \$450.

TECHNICAL NOTES:

The requirements of Section 6(2) for check scaling at the harvest site are impractical and are at variance with usual check-scaling practice. The usual practice is to do check scaling at the log purchaser's site after the purchaser has scaled the logs. Scaling in the woods around loading equipment is relatively costly, hazardous and requires time-consuming and expensive procedures to ensure the logs scaled actually end up on a particular load. It would also be easy for the purchaser to find out that checking scaling has been done at the harvest site, enabling the purchaser to adjust scaling practices only on the check-scaled loads.

Applying penalties for scaling discrepancies on an individual-load basis, as provided in Section 8, is technically inappropriate. Ordinarily several loads are required for a valid check scale. Based on experience in other states, applying penalties to discrepancies on single loads is unlikely to withstand a legal challenge.

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0169, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a timber scaling check program within the Department of Commerce; creating and establishing duties for a timber scaling review board; establishing fees to fund the timber scaling check program; creating a timber scaling special revenue account; amending sections 76-13-408 and 76-13-414, MCA; and providing an effective and termination date.

ASSUMPTIONS:

Department of Commerce:


1. The proposed timber scaling program will apply to all federal, state and private lands on which timber harvests occur.
2. The Department of Commerce will assess and collect reasonable fees. Approximately 1 billion board feet will be subject to the provisions of the proposed legislation. The department will assess a fee of \$0.075 per MBF which will generate approximately \$75,000 in program revenues each year.
3. Approximately 2,200 timber harvests occur each year. The proposed timber scaling program will check 10% of the total timber harvests. The department estimates 20 complaints per year with two complaints per year requiring enforcement.
4. The responsibilities given the department through the proposed legislation requires section status. A 1.00 FTE section supervisor and 1.00 FTE secretary will be required to assist with board meetings, complaints, telephone calls, correspondence, the required report to the legislature and all other facets of the program. Program personnel anticipate 20,000 miles of travel per year.

Department of State Lands: (DSL):

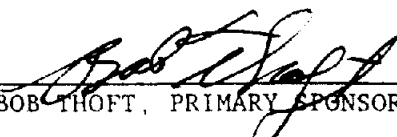
5. DSL receives approximately 1,000 purchaser reports of slash withholding and approximately 5,100 individual account transactions per year.
6. Purchase of a computer with larger capacity would be necessary due to increased size of the computer program. The current computer would be used elsewhere in the department or declared excess and sold. These are FY92 expenses only.
7. The administration of this program will require 0.25 FTE forestry accounting technician (grade 9) to perform the daily audit of purchaser slash withholding accounts; production and processing of billing letters for Master Hazard Reduction Agreements; and maintenance of program records.
8. All audit work required by this proposed legislation will be done through independent contract. All costs will be paid by the purchaser.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR 2-23-91
Office of Budget and Program Planning DATE



BOB THOFT, PRIMARY SPONSOR 3-8-91
Fiscal Note for HB0169, second reading. DATE
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FISCAL IMPACT:

<u>Dept. of Commerce</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	2.00	2.00	0.00	2.00	2.00
Personal Services	0	47,885	47,885	0	48,871	48,871
Operating Costs	0	24,200	24,200	0	23,586	23,586
Equipment	0	5,400	5,400	0	0	0
Total	0	77,485	77,485	0	72,457	72,457
<u>Funding:</u>						
State Special (02)	0	77,485	77,485	0	72,457	72,457
<u>Revenues:</u>						
Fees	0	75,000	75,000	0	75,000	75,000

State Lands:

<u>Expenditures</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	0.25	0.25	0.00	0.25	0.25
Personal Services	0	5,530	5,530	0	5,530	5,530
Operating Costs	0	4,500	4,500	0	500	500
Equipment	0	5,000	5,000	0	0	0
Total	0	15,030	15,030	0	6,030	6,030
<u>Funding:</u>						
General Fund	0	15,030	15,030	0	6,030	6,030
General Fund Impact			(15,030)			(6,030)

TECHNICAL NOTES:

1. The effective date of the proposed legislation is July 1, 1991. To enact the program will require computer enhancements to the current hazard reduction computer program, additional computer programming staff, additional clerical staff and computer hardware purchases. DSL FY91 budget doesn't have sufficient appropriation authority to afford these increased services. An applicability date of January 1, 1992 is recommended.
2. The current Hazard Reduction Law requires that any fee withheld for production volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department. The proposed legislation refers to the \$0.075 as a fee. If timber scaling fees are subject to refund provisions of the Hazard Reduction Law, the proposed computer enhancements would be more complicated and require a larger allocation of FTE for DSL to administer the provisions of the proposed legislation.

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APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 169

INTRODUCED BY THOFT, SVRCEK, GRADY, PECK,

DARKO, DRISCOLL, STANG

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING--A--TIMBER SCALING PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; REQUIRING CERTAIN--UNIFORM--TIMBER SCALING PRACTICES; REQUIRING A CHECK OF TIMBER SCALING PRACTICES; CREATING--A--FUND--FOR--PROGRAM COSTS; AUTHORIZING TIMBER SCALING FEES; ESTABLISHING A CIVIL PENALTY FOR VIOLATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; CREATING A TIMBER SCALING CHECK PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; CREATING AND ESTABLISHING DUTIES FOR A TIMBER SCALING REVIEW BOARD; ESTABLISHING FEES TO FUND THE TIMBER SCALING CHECK PROGRAM; CREATING A TIMBER SCALING SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 76-13-408 AND 76-13-414, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

STATEMENT OF INTENT

A--statement--of--intent--is--required--for--this--bill--to provide guidance to the department of commerce concerning the adoption of rules to ensure accurate and consistent timber scaling practices in Montana. The legislature directs the department of commerce to adopt rules to periodically monitor timber scaling and to provide assistance to timber

harvesters with complaints regarding timber scaling. The frequency of scaling checks must be sufficient to act as a deterrent to inaccurate and inconsistent scaling, and equally important, the scaling check program must address the concerns of those whose livelihoods depend on timber scaling. Additionally, the legislature recognizes that funding of the timber scaling program is crucial to realizing the goals of this bill and further directs the department to establish and collect appropriate and reasonable fees for timber scaling program administration. A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF COMMERCE CONCERNING THE ADOPTION OF RULES TO ESTABLISH A PROGRAM TO CHECK THE ACCURACY AND CONSISTENCY OF TIMBER SCALING PRACTICES IN MONTANA. THE LEGISLATURE DIRECTS THE DEPARTMENT OF COMMERCE TO ADOPT RULES TO PERIODICALLY MONITOR TIMBER SCALE AND PROVIDE ASSISTANCE TO TIMBER HARVESTERS WITH COMPLAINTS REGARDING TIMBER SCALING. THE FREQUENCY OF THE SCALING CHECKS MUST BE SUFFICIENT TO ACT AS A DETERRENT TO INACCURATE AND INCONSISTENT SCALING, AND EQUALLY IMPORTANT, THE SCALING CHECK PROGRAM MUST ADDRESS THE CONCERNS OF THOSE WHOSE LIVELIHOODS DEPEND ON THE LOG SCALE. IT IS THE FURTHER INTENT OF THE LEGISLATURE THAT THE DEPARTMENT EMPLOY ONE FULL-TIME EMPLOYEE TO CHECK TIMBER SCALING PRACTICES IN MONTANA. THIS EMPLOYEE MUST HAVE THE AUTHORITY TO CONDUCT



UNANNOUNCED SCALE CHECKS ON PUBLIC AND PRIVATE PROPERTY AS
NEEDED TO ACCOMPLISH THE GOALS OF THIS BILL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 5 and 8], the following definitions apply:

(1) "Board" means the timber scaling review board as provided in [section 4].

(2) "Department" means the department of commerce as provided for in 2-15-1801.

(3) "Handbook" means the National Forest Log Scaling Handbook published by the United States department of agriculture--forest service.

NEW SECTION. Section 2. Timber scaling checks -- department duties. (1) The department, in consultation with the board, shall monitor timber scaling practices in Montana to:

(a) investigate complaints from timber harvesters as provided in [section 5]; and

(b) gather information and facts regarding:

(i) timber scaling practices in Montana; and

(ii) the need for a mandatory state timber scaling

program.

(2) The department, upon presentation of credentials, may at reasonable times enter any public or private property to scale timber at locations and in a manner it determines necessary to comply with subsection (1). However, the minimum requirements for a scale check, as provided in subsection (3), must be followed before the department takes action under [section 3].

(3) For the purposes of this section, a scale check must:

(a) be conducted in accordance with the handbook; and

(b) include at least 100 logs and 5,000 board feet. If a variance between the mill scale and the department scale check exceeds the variance established in the handbook, the department shall scale check an additional 250 logs and 10,000 board feet.

(4) After a scale check under subsection (3), a variance between the mill scale and the department scale check that exceeds the variance established in the handbook is a violation of this section.

NEW SECTION. Section 3. Enforcement and penalties. (1) After conducting a scale check under [section 2], if the department determines that a violation has occurred, the department:

(a) shall, for the first violation, work with the mill

1 scaler and the scaler's employer to identify and correct the
2 mill scaling deficiencies;

3 (b) may, for the second violation, impose a civil
4 penalty not to exceed \$1,000 on the scaler's employer; or

5 (c) may, for the third or subsequent violation, impose
6 a civil penalty not to exceed \$5,000 on the scaler's
7 employer.

8 (2) The department shall consult with the board before
9 imposing a civil penalty under this section.

10 **NEW SECTION. Section 4. Timber scaling review board --**
11 **membership and duties.** (1) There is a timber scaling review
12 board. The department shall consult with the board on at
13 least a quarterly basis regarding the department's duties
14 under [section 2]. The department shall also consult with
15 the board to determine the qualifications for the department
16 scale checker.

17 (2) The board is composed of three members. The
18 governor shall appoint the members of the board, selecting
19 them on the basis of their knowledge of timber harvesting
20 and scaling practices. Representation on the board is as
21 follows:

22 (a) one independent timber harvester;

23 (b) one timber industry scaler; and

24 (c) one owner of private timberland.

25 (3) The board shall report to the governor and the

1 legislature by December 1, 1992. The report must contain
2 information regarding the:

3 (a) department's performance of its duties under
4 [section 2];

5 (b) need for a mandatory state timber scaling program;
6 and

7 (c) resolution of the complaints received under
8 [section 5].

9 (4) Members of the board are entitled to compensation
10 as provided in 2-15-122(5).

11 **NEW SECTION. Section 5. Timber harvester complaints.**

12 (1) The department shall give due weight and consideration
13 to any comments or complaints it receives from timber
14 harvesters regarding inaccurate scaling. The department may
15 select a specific harvest or a specific timber purchaser for
16 a scaling check, based on the comments and complaints
17 received.

18 (2) The department shall keep the identity of the
19 person making the comment or complaint confidential at the
20 request of that person.

21 (3) The department shall answer in writing each comment
22 or complaint received regarding the department's planned
23 action in response to the comment or complaint.

24 **Section 6.** Section 76-13-408, MCA, is amended to read:
25 "76-13-408. Fire hazard reduction agreement and bond.

1 (1) Before cutting any forest product, constructing or
 2 reconstructing any road in contemplation of cutting any
 3 forest product, or conducting timber stand improvement, such
 4 as but not limited to thinning, weeding, or pruning, upon
 5 private lands within the state, the person conducting the
 6 work shall provide for the reduction or management of the
 7 fire hazard to be created by entering into a fire hazard
 8 reduction agreement or a master fire hazard reduction
 9 agreement with the department, providing for the full and
 10 faithful compliance with all requirements under this part
 11 and the faithful reduction or management of the fire hazard
 12 in the manner prescribed by law and by rules adopted by the
 13 board.

14 (2) Either the person conducting the work or the
 15 purchaser as provided in 76-13-409(2) shall post a bond to
 16 the state in a form and for an amount as may be prescribed
 17 by the department, but the amount may not exceed \$6 for each
 18 1,000 board feet (log scale) or the equivalent if forest
 19 products other than logs are cut.

20 (3) Either the person conducting the work or the
 21 purchaser as provided in 76-13-409(2) shall also pay 7.5
 22 cents for each 1,000 board feet (log scale) or equivalent if
 23 forest products other than logs are cut. The full amount of
 24 this money must be deposited in the timber scaling account
 25 provided for in [section 8].

1 ~~(3)~~(4) The agreement must provide that:

2 (a) all fire hazard reduction or management work
 3 comprising nonburning methods and preparations for burning
 4 must be completed within 18 months of commencement of
 5 cutting in the area covered by the agreement; and

6 (b) all burning work must be completed as specified in
 7 the agreement and in compliance with rules adopted by the
 8 board.

9 ~~(4)~~(5) The bond must be released upon the issuance of
 10 the certificate of clearance."

11 **Section 7.** Section 76-13-414, MCA, is amended to read:

12 "76-13-414. Fees. (1) In addition to any bond, the
 13 department shall charge the contractor fees for
 14 administration, inspections, and enforcement work conducted
 15 in the exercise of its duties under this part. The fees
 16 must be deposited in the state special revenue fund to the
 17 credit of the department.

18 (2) (a) The fee for a fire hazard reduction agreement
 19 is \$25 and must be collected by the department upon issuance
 20 of the agreement.

21 (b) In addition, a fee of 60 cents for each 1,000 board
 22 feet (log scale) must be charged or an equivalent fee must
 23 be charged if products other than logs are cut. This fee
 24 must be withheld by the purchaser as provided in
 25 76-13-409(2), except that any fee money withheld for product

1 volumes exceeding 500,000 board feet per agreement in a
2 calendar year must be returned to the contractor by the
3 department.

4 (3) (a) Fees The fee for master fire hazard reduction
5 agreements must be equal to 100% of the department's actual
6 costs incurred in the administration, inspection, and
7 enforcement of each agreement, and the department shall bill
8 the contractor annually to collect such fees.

9 (b) In addition, each contractor with a master fire
10 hazard reduction agreement shall also pay to the department
11 7.5 cents for each 1,000 board feet (log scale) or
12 equivalent if forest products other than logs are cut. The
13 full amount of this money must be deposited in the timber
14 scaling account provided for in [section 8].

15 (i) The fee provided for in subsection (3)(b) must be
16 paid annually in conjunction with the fee paid under
17 subsection (3)(a).

18 (ii) The board may, at its discretion, conduct an audit
19 to determine the volume of forest products harvested by a
20 contractor.

21 (iii) If the board conducts an audit, the contractor
22 shall cooperate and make available to the board all
23 requested records, inventories, and other information
24 relevant to the audit."

25 NEW SECTION. Section 8. Timber scaling account. (1)

1 There is a timber scaling account in the state special
2 revenue fund provided for in 17-2-102.

3 (2) There must be deposited in the account:

4 (a) all revenue from the fire hazard reduction
5 agreement provided for in 76-13-408(3);

6 (b) all revenue from the master fire hazard reduction
7 agreement provided for in 76-13-414(3)(b);

8 (c) all money collected under the civil penalty
9 provisions in [section 3]; and

10 (d) money received by the department in the form of
11 legislative appropriations, reimbursements, gifts, federal
12 funds, or appropriations from any source intended to be used
13 for the purposes of this account.

14 (3) Money in the account is available to the department
15 of commerce for the uses set forth in subsection (4). Any
16 unencumbered and unexpended balance in this account
17 remaining at the end of a fiscal year does not lapse but
18 must be carried forward for the purposes of this section
19 until expended or appropriated.

20 (4) Money in the account may be used by the department
21 only to establish and maintain a timber scaling check
22 program as provided in [section 2].

23 NEW SECTION. Section 9. Severability. If a part of
24 [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the part
2 remains in effect in all valid applications that are
3 severable from the invalid applications.

4 NEW SECTION. **Section 10.** Effective date. [This act] is
5 effective July 1, 1991.

6 NEW SECTION. **Section 11.** Termination. [This act]
7 terminates July 1, 1993.

-End-

HOUSE BILL NO. 169

INTRODUCED BY THOFT, SVRCEK, GRADY, PECK,

DARKO, DRISCOLL, STANG

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING--A--TIMBER SCALING PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; REQUIRING CERTAIN--UNIFORM--TIMBER--SCALING--PRACTICES; REQUIRING--A--CHECK OF--TIMBER--SCALING--PRACTICES; CREATING--A--FUND--FOR--PROGRAM COSTS; AUTHORIZING--TIMBER--SCALING--FEES; ESTABLISHING--A--CIVIL PENALTY--FOR--VIOLATIONS; AND PROVIDING--AN--IMMEDIATE--EFFECTIVE DATE; CREATING A TIMBER SCALING CHECK PROGRAM WITHIN THE DEPARTMENT OF COMMERCE; CREATING AND ESTABLISHING DUTIES FOR A TIMBER SCALING REVIEW BOARD; ESTABLISHING FEES TO FUND THE TIMBER SCALING CHECK PROGRAM; CREATING A TIMBER SCALING SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 76-13-408 AND 76-13-414, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

STATEMENT OF INTENT

A--statement--of--intent--is--required--for--this--bill--to provide--guidance--to--the--department--of--commerce--concerning the--adoption--of--rules--to--ensure--accurate--and--consistent timber--scaling--practices--in--Montana; The--legislature--directs the--department--of--commerce--to--adopt--rules--to--periodically monitor--timber--scaling--and--to--provide--assistance--to--timber

harvesters--with--complaints--regarding--timber--scaling; The frequency--of--scaling--checks--must--be--sufficient--to--act--as--a deterrent--to--inaccurate--and--inconsistent--scaling; and equally--important; the--scaling--check--program--must--address the--concerns--of--those--whose--livelihoods--depend--on--timber scaling; Additionally, the--legislature--recognizes--that funding--of--the--timber--scaling--program--is--crucial--to realizing--the--goals--of--this--bill--and--further--directs--the department--to--establish--and--collect--appropriate--and reasonable--fees--for--timber--scaling--program--administration; A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF COMMERCE CONCERNING THE ADOPTION OF RULES TO ESTABLISH A PROGRAM TO CHECK THE ACCURACY AND CONSISTENCY OF TIMBER SCALING PRACTICES IN MONTANA. THE LEGISLATURE DIRECTS THE DEPARTMENT OF COMMERCE TO ADOPT RULES TO PERIODICALLY MONITOR TIMBER SCALE AND PROVIDE ASSISTANCE TO TIMBER HARVESTERS WITH COMPLAINTS REGARDING TIMBER SCALING. THE FREQUENCY OF THE SCALING CHECKS MUST BE SUFFICIENT TO ACT AS A DETERRENT TO INACCURATE AND INCONSISTENT SCALING, AND EQUALLY IMPORTANT, THE SCALING CHECK PROGRAM MUST ADDRESS THE CONCERNS OF THOSE WHOSE LIVELIHOODS DEPEND ON THE LOG SCALE. IT IS THE FURTHER INTENT OF THE LEGISLATURE THAT THE DEPARTMENT EMPLOY ONE FULL-TIME EMPLOYEE TO CHECK TIMBER SCALING PRACTICES IN MONTANA. THIS EMPLOYEE MUST HAVE THE AUTHORITY TO CONDUCT

1 UNANNOUNCED SCALE CHECKS ON PUBLIC AND PRIVATE PROPERTY AS
 2 NEEDED TO ACCOMPLISH THE GOALS OF THIS BILL.

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 5 (Refer to Introduced Bill)

6 Strike everything after the enacting clause and insert:

7 NEW SECTION. Section 1. Definitions. As used in
 8 [sections 1 through 5 and 8], the following definitions
 9 apply:

10 (1) "Board" means the timber scaling review board as
 11 provided in [section 4].

12 (2) "Department" means the department of commerce as
 13 provided for in 2-15-1801.

14 (3) "Handbook" means the National Forest Log Scaling
 15 Handbook published by the United States department of
 16 agriculture--forest service.

17 NEW SECTION. Section 2. Timber scaling checks --
 18 department duties. (1) The department, in consultation with
 19 the board, shall monitor timber scaling practices in Montana
 20 to:

21 (a) investigate complaints from timber harvesters as
 22 provided in [section 5]; and

23 (b) gather information and facts regarding:
 24 (i) timber scaling practices in Montana; and
 25 (ii) the need for a mandatory state timber scaling

1 program.

2 (2) The department, upon presentation of credentials,
 3 may at reasonable times enter any public or private property
 4 to scale timber at locations and in a manner it determines
 5 necessary to comply with subsection (1). However, the
 6 minimum requirements for a scale check, as provided in
 7 subsection (3), must be followed before the department takes
 8 action under [section 3].

9 (3) For the purposes of this section, a scale check
 10 must:

- 11 (a) be conducted in accordance with the handbook; and
- 12 (b) include at least 100 logs and 5,000 board feet. If
- 13 a variance between the mill scale and the department scale
- 14 check exceeds the variance established in the handbook, the
- 15 department shall scale check an additional 250 logs and
- 16 10,000 board feet.

17 (4) After a scale check under subsection (3), a
 18 variance between the mill scale and the department scale
 19 check that exceeds the variance established in the handbook
 20 is a violation of this section.

21 NEW SECTION. Section 3. Enforcement and penalties. (1)
 22 After conducting a scale check under [section 2], if the
 23 department determines that a violation has occurred, the
 24 department:

25 (a) shall, for the first violation, work with the mill

1 scaler and the scaler's employer to identify and correct the
2 mill scaling deficiencies;

3 (b) may, for the second violation, impose a civil
4 penalty not to exceed \$1,000 on the scaler's employer; or

5 (c) may, for the third or subsequent violation, impose
6 a civil penalty not to exceed \$5,000 on the scaler's
7 employer.

8 (2) The department shall consult with the board before
9 imposing a civil penalty under this section.

10 **NEW SECTION. Section 4. Timber scaling review board --**
11 **membership and duties.** (1) There is a timber scaling review
12 board. The department shall consult with the board on at
13 least a quarterly basis regarding the department's duties
14 under [section 2]. The department shall also consult with
15 the board to determine the qualifications for the department
16 scale checker.

17 (2) The board is composed of three members. The
18 governor shall appoint the members of the board, selecting
19 them on the basis of their knowledge of timber harvesting
20 and scaling practices. Representation on the board is as
21 follows:

- 22 (a) one independent timber harvester;
- 23 (b) one timber industry scaler; and
- 24 (c) one owner of private timberland.
- 25 (3) The board shall report to the governor and the

1 legislature by December 1, 1992. The report must contain
2 information regarding the:

3 (a) department's performance of its duties under
4 [section 2];

5 (b) need for a mandatory state timber scaling program;
6 and

7 (c) resolution of the complaints received under
8 [section 5].

9 (4) Members of the board are entitled to compensation
10 as provided in 2-15-122(5).

11 **NEW SECTION. Section 5. Timber harvester complaints.**

12 (1) The department shall give due weight and consideration
13 to any comments or complaints it receives from timber
14 harvesters regarding inaccurate scaling. The department may
15 select a specific harvest or a specific timber purchaser for
16 a scaling check, based on the comments and complaints
17 received.

18 (2) The department shall keep the identity of the
19 person making the comment or complaint confidential at the
20 request of that person.

21 (3) The department shall answer in writing each comment
22 or complaint received regarding the department's planned
23 action in response to the comment or complaint.

24 **Section 6.** Section 76-13-408, MCA, is amended to read:

25 "76-13-408. Fire hazard reduction agreement and bond.

1 (1) Before cutting any forest product, constructing or
 2 reconstructing any road in contemplation of cutting any
 3 forest product, or conducting timber stand improvement, such
 4 as but not limited to thinning, weeding, or pruning, upon
 5 private lands within the state, the person conducting the
 6 work shall provide for the reduction or management of the
 7 fire hazard to be created by entering into a fire hazard
 8 reduction agreement or a master fire hazard reduction
 9 agreement with the department, providing for the full and
 10 faithful compliance with all requirements under this part
 11 and the faithful reduction or management of the fire hazard
 12 in the manner prescribed by law and by rules adopted by the
 13 board.

14 (2) Either the person conducting the work or the
 15 purchaser as provided in 76-13-409(2) shall post a bond to
 16 the state in a form and for an amount as may be prescribed
 17 by the department, but the amount may not exceed \$6 for each
 18 1,000 board feet (log scale) or the equivalent if forest
 19 products other than logs are cut.

20 (3) Either the person conducting the work or the
 21 purchaser as provided in 76-13-409(2) shall also pay 7.5
 22 cents for each 1,000 board feet (log scale) or equivalent if
 23 forest products other than logs are cut. The full amount of
 24 this money must be deposited in the timber scaling account
 25 provided for in [section 8].

1 ~~(3)~~(4) The agreement must provide that:

2 (a) all fire hazard reduction or management work
 3 comprising nonburning methods and preparations for burning
 4 must be completed within 18 months of commencement of
 5 cutting in the area covered by the agreement; and

6 (b) all burning work must be completed as specified in
 7 the agreement and in compliance with rules adopted by the
 8 board.

9 ~~(4)~~(5) The bond must be released upon the issuance of
 10 the certificate of clearance."

11 **Section 7.** Section 76-13-414, MCA, is amended to read:

12 **"76-13-414. Fees.** (1) In addition to any bond, the
 13 department shall charge the contractor fees for
 14 administration, inspections, and enforcement work conducted
 15 in the exercise of its duties under this part. The fees
 16 must be deposited in the state special revenue fund to the
 17 credit of the department.

18 (2) (a) The fee for a fire hazard reduction agreement
 19 is \$25 and must be collected by the department upon issuance
 20 of the agreement.

21 (b) In addition, a fee of 60 cents for each 1,000 board
 22 feet (log scale) must be charged or an equivalent fee must
 23 be charged if products other than logs are cut. This fee
 24 must be withheld by the purchaser as provided in
 25 76-13-409(2), except that any fee money withheld for product

1 volumes exceeding 500,000 board feet per agreement in a
 2 calendar year must be returned to the contractor by the
 3 department.

4 (3) (a) Fees The fee for master fire hazard reduction
 5 agreements must be equal to 100% of the department's actual
 6 costs incurred in the administration, inspection, and
 7 enforcement of each agreement, and the department shall bill
 8 the contractor annually to collect such fees.

9 (b) In addition, each contractor with a master fire
 10 hazard reduction agreement shall also pay to the department
 11 7.5 cents for each 1,000 board feet (log scale) or
 12 equivalent if forest products other than logs are cut. The
 13 full amount of this money must be deposited in the timber
 14 scaling account provided for in [section 8].

15 (i) The fee provided for in subsection (3)(b) must be
 16 paid annually in conjunction with the fee paid under
 17 subsection (3)(a).

18 (ii) The board may, at its discretion, conduct an audit
 19 to determine the volume of forest products harvested by a
 20 contractor.

21 (iii) If the board conducts an audit, the contractor
 22 shall cooperate and make available to the board all
 23 requested records, inventories, and other information
 24 relevant to the audit."

25 NEW SECTION. Section 8. Timber scaling account. (1)

1 There is a timber scaling account in the state special
 2 revenue fund provided for in 17-2-102.

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 5 agreement provided for in 76-13-408(3);

6 (b) all revenue from the master fire hazard reduction
 7 agreement provided for in 76-13-414(3)(b);

8 (c) all money collected under the civil penalty
 9 provisions in [section 3]; and

10 (d) money received by the department in the form of
 11 legislative appropriations, reimbursements, gifts, federal
 12 funds, or appropriations from any source intended to be used
 13 for the purposes of this account.

14 (3) Money in the account is available to the department
 15 of commerce for the uses set forth in subsection (4). Any
 16 unencumbered and unexpended balance in this account
 17 remaining at the end of a fiscal year does not lapse but
 18 must be carried forward for the purposes of this section
 19 until expended or appropriated.

20 (4) Money in the account may be used by the department
 21 only to establish and maintain a timber scaling check
 22 program as provided in [section 2].

23 NEW SECTION. Section 9. Severability. If a part of
 24 [this act] is invalid, all valid parts that are severable
 25 from the invalid part remain in effect. If a part of [this

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1 act] is invalid in one or more of its applications, the part
2 remains in effect in all valid applications that are
3 severable from the invalid applications.

4 NEW SECTION. **Section 10. Effective date.** [This act] is
5 effective July 1, 1991.

6 NEW SECTION. **Section 11. Termination.** [This act]
7 terminates July 1, 1993.

-End-