

HOUSE BILL 971

Introduced by Cohen

2/23	Introduced
2/23	Referred to Taxation
2/23	First Reading
2/23	Fiscal Note Requested
3/05	Rereferred to Natural Resources
3/08	Fiscal Note Received
3/21	Hearing
3/27	Tabled in Committee

1 HOUSE BILL NO. 971  
2 INTRODUCED BY [Signature]

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
5 MONTANA FOREST RESOURCES MANAGEMENT ACT; REQUIRING OPERATORS  
6 TO NOTIFY THE DEPARTMENT OF STATE LANDS PRIOR TO CONDUCTING  
7 FOREST PRACTICES; PROVIDING FOR ONSITE CONSULTATION ON  
8 FOREST PRACTICES; REQUIRING THE BOARD OF LAND COMMISSIONERS  
9 TO ADOPT RULES ESTABLISHING ENFORCEABLE BEST MANAGEMENT  
10 PRACTICES FOR FORESTRY; PROVIDING PENALTIES FOR  
11 NONCOMPLIANCE; REQUIRING STATE FORESTS TO BE MANAGED FOR  
12 SUSTAINED YIELD; ESTABLISHING A FOREST PRACTICES ACCOUNT AND  
13 A FOREST EXTENSION SERVICE ACCOUNT; CREATING A TIMBER  
14 SEVERANCE TAX FOR THE PURPOSE OF ENFORCING BEST MANAGEMENT  
15 PRACTICES FOR FORESTRY; AMENDING SECTION 76-13-104, MCA;  
16 REPEALING SECTIONS 76-13-131, 76-13-132, 76-13-133,  
17 76-13-134, AND 76-13-135, MCA; AND PROVIDING AN IMMEDIATE  
18 EFFECTIVE DATE AND APPLICABILITY DATES."  
19

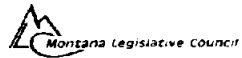
20 STATEMENT OF INTENT

21 It is the intent of the legislature that the board of  
22 land commissioners adopt rules establishing enforceable best  
23 management practices for forestry. In preparation for  
24 drafting the rules, the board shall consult with forestry  
25 officials from federal, state, and private agencies and

1 organizations involved in forest management; review the  
2 regulations of other states; consider the experiences and  
3 recommendations of persons who have developed, administered,  
4 and been subject to these regulations; and consider recent  
5 research on the effects of forest practices on watersheds  
6 and wildlife.

7 The legislature finds that, particularly in some  
8 communities and class I airsheds, current efforts to  
9 coordinate and manage slash hazard reduction have not  
10 satisfactorily protected air quality. Accordingly, it is the  
11 intent of the legislature that the department of health and  
12 environmental sciences develop new programs and guidelines  
13 to more effectively address air quality problems stemming  
14 from the burning of slash and that the signators to the  
15 Montana smoke management memorandum of agreement cooperate  
16 with the department in this effort.

17 It is the intent of the legislature that the department  
18 of revenue, under the authority granted in 15-1-201, adopt  
19 any rules necessary to achieve the fair and efficient  
20 collection of the timber severance tax provided for in  
21 [section 14]. To the extent practicable, the rules should  
22 provide for this collection in a manner compatible with the  
23 collection of funds related to the fire hazard reduction  
24 agreements and bonds provided for in 76-13-408.  
25



INTRODUCED BILL  
HB 971

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

2 NEW SECTION. **Section 1.** Short title. This act may be  
3 cited as the "Montana Forest Resources Management Act".

4 NEW SECTION. **Section 2.** Findings and purpose. (1) The  
5 legislature finds that the management of forest land for the  
6 production of forest products contributes significantly to  
7 the economy of Montana and to the well-being of its people.

8 (2) The legislature further finds that the use of best  
9 management practices in timber sale planning and associated  
10 road construction, timber harvesting, site preparation, and  
11 related activities is a necessary and effective means to  
12 conserve Montana's forest watershed, water quality,  
13 wildlife, and recreation resources.

14 (3) The legislature further finds that there is a need  
15 to ensure that best management practices are conducted by  
16 owners and operators engaged in forest practices.

17 (4) The purpose of [sections 1 through 12] is to  
18 establish a systematic method for the determination and  
19 enforcement of best management practices for forestry so  
20 that owners and operators use these practices for the  
21 benefit of their operations and of Montana's forest  
22 watershed, water quality, air quality, wildlife, and  
23 recreation resources.

24 (5) The purpose of [sections 14 through 26] is to  
25 establish an account into which revenue from a timber

1 severance tax may be deposited and from which money may be  
2 spent to support a state program to promote and enforce the  
3 use of best management practices for forestry.

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

6 (1) "Best management practices" means a combination of  
7 reasonable land, soil, and water conservation practices that  
8 are determined to be the most effective, practicable means,  
9 including technological, economic, and institutional  
10 considerations, of:

11 (a) preventing or reducing the amount of pollution  
12 generated by nonpoint sources to a level compatible with  
13 established state and federal air and water quality goals  
14 and regulations; and

15 (b) conserving fish and wildlife habitat.

16 (2) "Board" means the board of land commissioners  
17 provided for in Article X, section 4, of the Montana  
18 constitution.

19 (3) "Cumulative effect" means the impact on the  
20 environment that results from the incremental impact of an  
21 action when added to other past, present, and reasonably  
22 foreseeable future actions regardless of what agency or  
23 person undertakes the other actions. Cumulative effects can  
24 result from individually minor but collectively significant  
25 actions taking place over a period of time.

1 (4) "Department" means the department of state lands  
2 provided for in 2-15-3201.

3 (5) (a) "Forest practices" means harvesting trees or  
4 firewood, road construction or reconstruction associated  
5 with accessing and harvesting trees, site preparation for  
6 regeneration of a timber stand, reforestation, and  
7 management of logging slash.

8 (b) The term does not include activities for the  
9 purpose of:

- 10 (i) operating a nursery or a Christmas tree farm;  
11 (ii) harvesting Christmas trees;  
12 (iii) cutting trees for personal use by an owner or  
13 operator.

14 (6) "Operator" means a person responsible for  
15 conducting forest practices. An operator may be the owner,  
16 the owner's agent, or a person who, through contractual  
17 agreement with the owner, is obligated or entitled to  
18 conduct forest practices or to carry out a timber sale.

19 (7) "Owner" means a person having the actual beneficial  
20 ownership of forest land or timber other than an easement,  
21 right-of-way, or mineral reservation.

22 (8) "Person" means an individual or a corporation,  
23 partnership, or association of any kind.

24 (9) "Recreation" includes but is not limited to  
25 backpacking, hiking, boating, fishing, hunting, skiing, and

1 wildlife viewing.

2 (10) "Timber sale" means a connected series of forest  
3 practices designed to access, harvest, and regenerate trees  
4 on a defined area of land.

5 NEW SECTION. **Section 4. Compliance required.** A person  
6 conducting forest practices shall comply with the provisions  
7 of [sections 1 through 12], including requirements for  
8 notification, consultation, and compliance with rules and  
9 site-specific best management practices established pursuant  
10 to onsite consultations.

11 NEW SECTION. **Section 5. Notification prior to**  
12 **conducting forest practices.** (1) Before conducting forest  
13 practices on private land, an operator shall notify the  
14 department, as provided in subsection (3), of the following:

15 (a) the location of the proposed forest practices to be  
16 conducted;

17 (b) the names and addresses of the owner and the  
18 operator;

19 (c) the estimated volume of timber or other appropriate  
20 measure of the product to be harvested;

21 (d) the method of harvest (silvicultural system) and  
22 the type of equipment to be used;

23 (e) the length and location of any roads to be  
24 constructed or subject to major reconstruction;

25 (f) the name of and distance to any stream, river, or

1 other body of water within, adjacent to, or closest to the  
2 forest practices boundary and the location of all stream  
3 crossings within the boundary of or on access roads to the  
4 forest practices; and

5 (g) the date the forest practices are scheduled to  
6 begin and the estimated date of completion.

7 (2) The notification must be:

8 (a) on a form provided by the department. The  
9 department shall develop forms to combine the notification  
10 required under this section with any notification required  
11 with respect to an agreement under 76-13-408.

12 (b) made to the nearest field office of the department.

13 (3) Except as provided under subsection (4), the  
14 department may require only one notification for each timber  
15 sale, even though multiple forest practices may be conducted  
16 as part of the timber sale.

17 (4) If an owner or operator modifies his plans for  
18 proposed forest practices in a manner that substantially  
19 alters the extent or location of potential disturbances to  
20 the land or watershed, he shall submit a revised  
21 notification to the department.

22 (5) If the owner is not the operator, a copy of any  
23 timber harvest agreement must be included with the  
24 notification and the agreement must specify the individual  
25 responsible for the implementation of best management

1 practices.

2 NEW SECTION. **Section 6. Response by department.** (1)

3 Within 10 working days of receiving a notification required  
4 by [section 5], the department shall mail to the operator  
5 and, if an address has been provided, to the owner a receipt  
6 of notification, information on best management practices  
7 for forestry, a notice of any requirement for an onsite  
8 consultation pursuant to [section 7], and any other  
9 information that the department believes would assist the  
10 operator or the owner with the conduct of the forest  
11 practices.

12 (2) The receipt of notification must include:

13 (a) a statement that the department does not wish to  
14 conduct an onsite consultation and that the forest practices  
15 may proceed; or

16 (b) a notice of the requirement for an onsite  
17 consultation prior to the conduct of forest practices.

18 (3) The department's decision on whether to require an  
19 onsite consultation must be based on the procedures and  
20 criteria provided in [section 7].

21 NEW SECTION. **Section 7. Onsite consultation.** (1) The  
22 department shall require an onsite consultation prior to the  
23 commencement of forest practices if the department  
24 determines that the proposed forest practices are in a high  
25 priority location for watershed, water quality, air quality,

1 wildlife, or recreation resources and that a consultation  
2 could contribute to improved resource management. If the  
3 department requires an onsite consultation and provides  
4 notice of this requirement pursuant to [section 6(2)], the  
5 operator may not proceed with the forest practices until the  
6 consultation has been held.

7 (2) In making its determination on the need for an  
8 onsite consultation, the department may consult with the  
9 operator, the owner, and appropriate federal, state, local,  
10 and private agencies and individuals and shall consider the  
11 following factors:

12 (a) the magnitude and location of the possible land  
13 disturbance associated with the proposed forest practices,  
14 including stream crossings, road construction or  
15 reconstruction, harvest volume, harvest methods, and  
16 equipment;

17 (b) the sensitivity of soils, topography, water  
18 quality, watershed condition, riparian zones and wetlands,  
19 and other site conditions to potential adverse impacts from  
20 the forest practices;

21 (c) the sensitivity of the beneficial water uses,  
22 including drinking water, fisheries, agriculture, and other  
23 uses, to potential impairment by the forest practices;

24 (d) the importance of the site as fish and wildlife  
25 habitat;

1 (e) the ecological significance of the site, with  
2 particular consideration to the conservation of old-growth  
3 forests;

4 (f) the impacts of hazard reduction (slash burning) on  
5 local airsheds and air quality and the coordination of  
6 hazard reduction with other landowners;

7 (g) recreational uses of the area; and

8 (h) the cumulative effect of multiple forest and other  
9 land management activities upon the factors listed in  
10 subsection (2).

11 (3) The department shall schedule an onsite  
12 consultation at a time mutually agreeable to the operator,  
13 the owner (if he can be contacted and wishes to  
14 participate), and the department. The department shall also  
15 notify the department of health and environmental sciences,  
16 the department of fish, wildlife, and parks, and the local  
17 conservation district of the onsite consultation. Unless  
18 otherwise agreeable to the operator and a participating  
19 owner, a consultation must be held no later than:

20 (a) 10 working days after the mailing of the notice by  
21 the department; or

22 (b) if the site is temporarily inaccessible due to road  
23 conditions, weather conditions, or other factors, 10 working  
24 days after the operator indicates the site is accessible.

25 (4) The onsite consultation must include

1 representatives of the department, the operator, and, if the  
 2 owner desires representation, the owner. Representatives of  
 3 the department of health and environmental sciences, the  
 4 department of fish, wildlife, and parks, and the local  
 5 conservation district may also participate. The department  
 6 shall request the participation of these agencies whenever  
 7 the department determines that their expertise would assist  
 8 in the development of site-specific best management  
 9 practices.

10 (5) If the operator is unable to schedule a  
 11 consultation with the department within the applicable time  
 12 limit provided in subsection (3)(a) or (3)(b) and is  
 13 unwilling to schedule a consultation at another time, the  
 14 department shall schedule the onsite consultation with the  
 15 operator on a date prior to the date the forest practices  
 16 are scheduled to begin.

17 (6) An onsite consultation must consist of:

18 (a) a site-specific review of the proposed harvest  
 19 location and techniques, road location and construction or  
 20 reconstruction techniques, and other proposed forest  
 21 practices;

22 (b) a site-specific review of watershed conditions,  
 23 sensitive environmental features or water uses, water  
 24 quality concerns, fish and wildlife habitat, old-growth  
 25 timber stands, recreation, and other related issues; and

1 (c) an opportunity for the department, in cooperation  
 2 with other state and local officials, to develop  
 3 site-specific best management practices for forestry that  
 4 provide protection for watershed, water quality, air  
 5 quality, wildlife, and recreation values.

6 (7) The department shall provide the operator with a  
 7 written copy of any site-specific best management practices  
 8 developed by the department through the onsite consultation.  
 9 The operator shall comply with these practices and with  
 10 rules adopted under [section 8].

11 (8) The department does not incur any obligation or  
 12 liability by virtue of a decision to conduct or not to  
 13 conduct an onsite consultation.

14 **NEW SECTION. Section 8. Rulemaking.** The board shall  
 15 adopt rules establishing enforceable best management  
 16 practices for forestry. Best management practices must  
 17 provide for the protection and conservation of watershed,  
 18 water quality, air quality, wildlife, and recreation values  
 19 and must include minimum standards for:

- 20 (1) timber harvesting;  
 21 (2) road construction and reconstruction;  
 22 (3) road densities;  
 23 (4) management activities in riparian zones;  
 24 (5) site preparation and reforestation;  
 25 (6) hazard reduction; and

1 (7) use of chemicals.

2 **NEW SECTION. Section 9. Forest practices account.** (1)

3 There is a forest practices account in the state special  
4 revenue fund provided for in 17-2-102.

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

6 (a) nine-tenths of all revenue from the timber  
7 severance tax provided for in [section 14]; and

8 (b) money that is received by the department in the  
9 form of legislative appropriations, reimbursements, gifts,  
10 federal funds, or appropriations from any source and that is  
11 intended to be used for the purposes of this account.

12 (3) The account may be used by the department only to  
13 administer [sections 1 through 12] and to provide  
14 educational materials and programs related to the use of  
15 best management practices for forestry.

16 **NEW SECTION. Section 10. Penalties -- inspections --**  
17 **administrative orders.** (1) An operator who fails to comply  
18 with written best management practices developed by the  
19 department as part of an onsite consultation under [section  
20 7] or who violates any other provision of [sections 1  
21 through 12], any rule adopted under [sections 1 through 12],  
22 or an order issued under this section is guilty of a  
23 misdemeanor and shall be punished by a fine not to exceed  
24 \$500. An operator convicted of a second or subsequent  
25 offense under this section is subject to a fine not to

1 exceed \$1,000, imprisonment in the county jail not to exceed  
2 6 months, or both. Each day of violation is a separate  
3 violation.

4 (2) The department may inspect the work of an operator  
5 to assess compliance with [sections 1 through 12], rules  
6 adopted under [sections 1 through 12], or an order issued  
7 under this section.

8 (3) (a) In the case of a violation resulting in severe  
9 damage to watershed, water quality, air quality, wildlife,  
10 or recreation resources, the department shall serve in  
11 writing to the alleged violator an order to:

12 (i) undertake necessary site rehabilitation within a  
13 reasonable period of time stated in the order; or

14 (ii) indemnify the department at a rate of twice the  
15 actual cost of rehabilitating the site.

16 (b) The order becomes final unless, within 30 days  
17 after the notice is served, the person named requests in  
18 writing a hearing before the department. On receipt of the  
19 request, the department shall schedule a hearing. Service by  
20 mail is complete on the date of mailing.

21 (c) If, after a hearing, the department finds that a  
22 violation has occurred and that the damage to watershed,  
23 water quality, wildlife habitat, or recreation resources  
24 warrants site rehabilitation, it shall either affirm or  
25 modify the order previously issued. If, after a hearing, the



1 department finds no violation has occurred or that site  
2 rehabilitation is not warranted, it shall rescind the order.

3 (d) Subsection (3) does not prevent the department from  
4 seeking voluntary compliance through warning, conference, or  
5 any other appropriate means.

6 (4) To the extent practicable and in addition to any  
7 other inspections, the department shall evaluate the  
8 application of the forest practices as part of an onsite  
9 inspection relating to the control of timber slash and  
10 debris conducted under the provisions of Title 76, chapter  
11 13, part 4.

12 (5) This section does not affect the authority of the  
13 department of health and environmental sciences to take any  
14 action necessary to enforce or ensure compliance with Title  
15 75, chapter 2 or 5.

16 NEW SECTION. Section 11. Civil penalties --  
17 injunctions not barred. (1) A person who violates [sections  
18 1 through 12] or a rule or an order established under the  
19 provisions of [sections 1 through 12] is subject to a civil  
20 penalty not to exceed \$5,000. Each day of violation  
21 constitutes a separate violation.

22 (2) Action under this section does not bar enforcement  
23 by injunction or other appropriate remedy of [sections 1  
24 through 12] or of a rule promulgated under [sections 1  
25 through 12].

1 (3) The department shall institute and maintain any  
2 enforcement proceedings in the name of the state.

3 NEW SECTION. Section 12. Injunctions authorized. (1)  
4 The department is authorized to commence a civil action  
5 seeking appropriate relief, including a permanent or  
6 temporary injunction, for a violation that would be subject  
7 to an administrative order under [section 10]. An action  
8 under this subsection may be commenced in the district court  
9 of the county in which the defendant is located or resides  
10 or is doing business or any county in which a violation  
11 occurs or is threatened if the defendant cannot be located  
12 in Montana. The court has jurisdiction to restrain the  
13 violation and to require compliance.

14 (2) The department may bring an action for an  
15 injunction against the continuation of an alleged violation  
16 of best management practices developed by the department or  
17 of any rule promulgated under [sections 1 through 12]. The  
18 court to which the department applies for an injunction may  
19 issue a temporary injunction if it finds that there is  
20 reasonable cause to believe that the allegations of the  
21 department are true, and it may issue a temporary  
22 restraining order pending action on the temporary  
23 injunction.

24 NEW SECTION. Section 13. Sustained yield -- required  
25 for state forests. The amount of timber harvested from state

1 forests provided for in 77-5-101 may not exceed a harvest  
2 level that ensures a sustained yield of merchantable timber  
3 in perpetuity. The department shall consider the following  
4 objectives in managing timber for sustained yield:

- 5 (1) a stable and regular supply of merchantable timber;
- 6 (2) the maintenance and enhancement of the physical and  
7 biological productivity of the land; and
- 8 (3) a stable and regular supply of nontimber resources,  
9 including water and wildlife.

10 NEW SECTION. Section 14. Timber severance tax. (1)  
11 There is a timber severance tax on all forest products  
12 harvested within the state. The tax attaches at the time the  
13 forest product is harvested. The tax is owed by the operator  
14 and must be paid to the department by the operator as  
15 provided in [section 16].

16 (2) The rate of the tax is \$1.50 per 1,000 board feet  
17 (log scale) or, if timber is cut in a form other than logs,  
18 the equivalent thereof.

19 NEW SECTION. Section 15. Definitions. As used in  
20 [sections 14 through 26], the following definitions apply:

- 21 (1) "Department" means the department of revenue  
22 provided for in 2-15-1301.
- 23 (2) "Forest products" means trees or their component  
24 parts, including but not limited to logs, poles, branches,  
25 and bark. The term does not include activities for the

1 purpose of:

- 2 (a) operating a nursery or a Christmas tree farm;
- 3 (b) harvesting Christmas trees;
- 4 (c) cutting trees for personal use by an owner or  
5 operator; or
- 6 (d) cutting firewood.

7 (3) "Operator" means the person who harvests the forest  
8 product. An operator may be the owner, the owner's agent, or  
9 a person who, through a contractual agreement, is obligated  
10 or entitled to harvest forest products, regardless of where  
11 the purchase is made or the location of the person's place  
12 of business.

13 (4) "Tax" means the timber severance tax provided for  
14 in [section 14].

15 (5) "Timber volume" means the amount of timber cut in  
16 units of 1,000 board feet (log scale) or, if timber is cut  
17 in a form other than logs, the equivalent thereof.

18 NEW SECTION. Section 16. Quarterly payment of tax. The  
19 operator shall pay the tax quarterly for the periods ending  
20 March 31, June 30, September 30, and December 31 of each  
21 year. The tax for each quarterly period must be paid to the  
22 department on the last day of the second month following the  
23 end of the quarter.

24 NEW SECTION. Section 17. Tax return and payment --  
25 records. (1) Each operator shall, within 60 days after the

1 end of each quarter, prepare and submit on forms prescribed  
 2 by the department a return showing the timber volume of  
 3 forest products harvested during each month of the quarter  
 4 and during the whole quarter, together with the total amount  
 5 of tax due to the state for the quarter. The return must be  
 6 signed by the operator or the president, vice president,  
 7 treasurer, or managing agent of the business, partnership,  
 8 or corporation or any other entity covered by the return. A  
 9 person engaged in harvesting forest products at more than  
 10 one location within or outside of the state may include all  
 11 purchases in one return.

12 (2) Each operator shall keep receipts, invoices, log  
 13 scale tickets, and other pertinent records that the  
 14 department may require, shall produce them for inspection by  
 15 the department at any time during normal business hours, and  
 16 shall keep them for at least 5 years from the due date of  
 17 the return.

18 NEW SECTION. Section 18. Department determination of  
 19 tax in absence of return -- penalty and interest -- warrant  
 20 for distraint. (1) If a person fails, neglects, or refuses  
 21 to file a return as required and within the time limits  
 22 established by [section 17], the department shall,  
 23 immediately after the time has expired, proceed to determine  
 24 the timber volume harvested by the operator in this state  
 25 during the quarter and the tax due to the state from the

1 operator for the quarter.

2 (2) The department shall add to the amount of the tax a  
 3 10% penalty plus interest at the rate of 1% a month or  
 4 fraction thereof computed on the tax and penalty. Interest  
 5 must be computed from the date the tax was due to the date  
 6 of payment.

7 (3) The department shall mail to the person responsible  
 8 for the tax payment a letter setting forth the amount of  
 9 tax, penalty, and interest due and informing him that a  
 10 warrant for distraint may be filed if payment is not made.

11 (4) If all or part of the tax imposed by [sections 14  
 12 through 26] is not paid when due, the department may issue a  
 13 warrant for distraint as provided in Title 15, chapter 1,  
 14 part 7.

15 NEW SECTION. Section 19. Penalty for violations. A  
 16 person who fails, neglects, or refuses to file a return in  
 17 the manner or within the time required, who falsifies any  
 18 return or other information required under [sections 14  
 19 through 26], or who violates any other provision of  
 20 [sections 14 through 26] or a rule adopted to implement  
 21 [sections 14 through 26] is guilty of a misdemeanor  
 22 punishable by a fine not to exceed \$1,000 or imprisonment  
 23 not to exceed 6 months, or both.

24 NEW SECTION. Section 20. Deficiency assessment --  
 25 hearing -- interest. (1) When the department determines that

1 the tax due is greater than the amount disclosed by the  
 2 return filed pursuant to [section 17], the department shall  
 3 mail to the taxpayer a notice of the additional tax proposed  
 4 to be assessed. Within 30 days after mailing of the notice,  
 5 the taxpayer may file with the department a written protest  
 6 against the proposed additional tax, setting forth the  
 7 grounds upon which the protest is based, and may request an  
 8 oral hearing. If a protest is not filed, the amount of the  
 9 additional tax proposed to be assessed becomes final upon  
 10 the expiration of the 30-day period. If a protest is filed,  
 11 the department shall hold an oral hearing if requested by  
 12 the taxpayer and may reconsider the proposed assessment.  
 13 After consideration of the protest and any evidence  
 14 presented, the department shall take final action on the  
 15 protest and mail notice of its action to the taxpayer.

16 (2) When a deficiency is sustained by final action of  
 17 the department, the department shall mail a notice and  
 18 demand for payment to the taxpayer. The tax is due 10 days  
 19 from the date of notice. A deficiency assessment bears  
 20 interest at the rate of 1% a month or fraction thereof,  
 21 computed from the original due date of the return required  
 22 by [section 17]. A certificate by the department of the  
 23 mailing of the notice specified in this subsection is prima  
 24 facie evidence of the computation and levy of the deficiency  
 25 in the taxes and of the giving of the notice.

1 NEW SECTION. Section 21. Statute of limitations. (1)  
 2 Except as otherwise provided in this section, a deficiency  
 3 may not be assessed with respect to the year for which a  
 4 return is filed unless the notice of additional tax is  
 5 mailed within 5 years from the date the return was filed.  
 6 For the purposes of this section, a return filed before the  
 7 last day prescribed for filing is considered as filed on the  
 8 last day. If the taxpayer, before the expiration of the  
 9 period prescribed for assessment of the tax, consents in  
 10 writing to an assessment after that time, the tax may be  
 11 assessed at any time prior to the expiration of the period  
 12 agreed upon.

13 (2) A refund or credit may not be paid or allowed with  
 14 respect to the year for which a return is filed after 5  
 15 years from the last day prescribed for filing the return or  
 16 after 1 year from the date of the overpayment, whichever is  
 17 later, unless before the expiration of the period the  
 18 taxpayer files a claim or unless the department has  
 19 determined the existence of the overpayment and has approved  
 20 the refund or credit. If the taxpayer has agreed in writing  
 21 under the provisions of subsection (1) to extend the time  
 22 within which the department may propose an additional  
 23 assessment, the period within which a claim for the refund  
 24 or credit may be filed or allowed is automatically extended.

25 (3) If a return is required to be filed and the

1 taxpayer fails to file the return, the tax may be assessed  
 2 or an action to collect the tax may be brought at any time.  
 3 If a return is required to be filed and the taxpayer files a  
 4 fraudulent return, the 5-year period provided for in  
 5 subsection (1) does not begin until discovery of the fraud  
 6 by the department.

7 NEW SECTION. Section 22. Credit for overpayment --  
 8 interest on overpayment. (1) If the department determines  
 9 that the amount of tax, penalty, or interest due for any  
 10 taxable period is less than the amount paid, the amount of  
 11 the overpayment must be credited against any tax, penalty,  
 12 or interest then due from the taxpayer and the balance must  
 13 be refunded to the taxpayer or its successor through  
 14 reorganization, merger, or consolidation or to its  
 15 shareholders upon dissolution.

16 (2) Except as provided in subsections (2)(a) and  
 17 (2)(b), interest is allowed on overpayments at the same rate  
 18 as is charged on delinquent taxes due from the due date of  
 19 the return or from the date of overpayment, whichever date  
 20 is later, to the date the department approves refunding or  
 21 crediting of the overpayment. Interest may not accrue during  
 22 any period in which the processing of a claim for refund is  
 23 delayed more than 30 days by reason of failure of the  
 24 taxpayer to furnish information requested by the department  
 25 for the purpose of verifying the amount of the overpayment.

1 Interest is not allowed:

2 (a) if the overpayment is refunded within 6 months from  
 3 the date the return is due or from the date the return is  
 4 filed, whichever is later; or

5 (b) if the amount of interest is less than \$1.

6 (3) A payment not made incident to the discharge of an  
 7 actual tax liability or one reasonably assumed to be imposed  
 8 by [sections 14 through 26] may not be considered an  
 9 overpayment with respect to which interest is allowable.

10 NEW SECTION. Section 23. Application for refund --  
 11 appeal from denial. If the department disallows any claim  
 12 for refund, it shall notify the taxpayer accordingly. Thirty  
 13 days from the mailing of the notice, the department's action  
 14 becomes final unless, within the 30-day period the taxpayer  
 15 appeals in writing from the action of the department to the  
 16 state tax appeal board. If an appeal is made, the board  
 17 shall grant the taxpayer an oral hearing. After  
 18 consideration of the appeal and evidence presented, the  
 19 board shall mail notice to the taxpayer of its  
 20 determination. The board's determination is final when it  
 21 mails notice of its action to the taxpayer.

22 NEW SECTION. Section 24. Closing agreements. (1) The  
 23 director of revenue or a person authorized in writing by him  
 24 is authorized to enter into an agreement with a taxpayer  
 25 relating to the liability of the taxpayer in respect to the

1 taxes imposed by [sections 14 through 26] for any period.

2 (2) An agreement under the provisions of subsection (1)  
3 is final and conclusive, and except upon a showing of fraud  
4 or malfeasance or misrepresentation of a material fact:

5 (a) the case may not be reopened as to matters agreed  
6 upon or the agreement modified by any officer, employee, or  
7 agent of this state; and

8 (b) in any suit, action, or proceeding under the  
9 agreement or any determination, assessment, collection,  
10 payment, abatement, refund, or credit made in accordance  
11 with the agreement, the agreement may not be annulled,  
12 modified, set aside, or disregarded.

13 **NEW SECTION. Section 25. Forestry extension service**  
14 **account -- purpose -- appropriation.** (1) There is a forestry  
15 extension service account in the state special revenue fund  
16 provided for in 17-2-102.

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

18 (a) one-tenth of the revenue generated from the timber  
19 severance tax provided for in [section 14]; and

20 (b) money that is received by the department in the  
21 form of legislative appropriations, reimbursements, gifts,  
22 federal funds, or appropriations from any source and that is  
23 intended to be used for the purposes of this account.

24 (3) Money in the account is available to the Montana  
25 university system by appropriation for the uses set forth in

1 subsection (4). Any unencumbered and unexpended balance of  
2 this account remaining at the end of a fiscal year does not  
3 lapse but must be carried forward for the purposes of this  
4 section until expended or appropriated.

5 (4) Money in the account may be used by the university  
6 system only to fund forestry services through the Montana  
7 cooperative extension service of Montana state university.

8 **NEW SECTION. Section 26. Disposition of tax.** The tax  
9 collected under [sections 14 through 26] must be deposited  
10 in the following accounts:

11 (1) One-tenth must be deposited in the forestry  
12 extension service account administered by the Montana state  
13 university system and provided for in [section 25].

14 (2) Nine-tenths must be deposited in the forest  
15 practices account administered by the department of state  
16 lands and provided for in [section 9].

17 **Section 27.** Section 76-13-104, MCA, is amended to read:

18 "76-13-104. **Functions of department.** (1) The department  
19 may give technical and practical advice concerning forest,  
20 range, water, and soil conservation and the establishment  
21 and maintenance of woodlots, windbreaks, shelterbelts, and  
22 forest fire protection.

23 (2) The department shall cooperate with all public and  
24 other agencies in the development, protection, and  
25 conservation of the forest, range, and water resources in

1 this state.

2 ~~{3}--The--department--shall--require--an--owner--or--operator~~  
3 ~~to--provide--a--notification--prior--to--conducting--forest~~  
4 ~~practices--as--provided--in--76-13-131--shall--adapt--as--necessary~~  
5 ~~any--procedure--used--for--notification--with--respect--to--an~~  
6 ~~agreement--under--76-13-408--to--ensure--that--the--operator~~  
7 ~~provides--information--on--the--location--of--the--forest--practices~~  
8 ~~in--relation--to--watershed--features--and--shall--conduct--onsite~~  
9 ~~consultations--as--provided--for--in--76-13-132."~~

10 NEW SECTION. Section 28. Repealer. Sections 76-13-131,  
11 76-13-132, 76-13-133, 76-13-134, and 76-13-135, MCA, are  
12 repealed.

13 NEW SECTION. Section 29. Codification instruction. (1)  
14 [Sections 1 through 13] are intended to be codified as an  
15 integral part of Title 76, chapter 13, and the provisions of  
16 Title 76, chapter 13, apply to [sections 1 through 13].

17 (2) [Sections 14 through 26] are intended to be  
18 codified as an integral part of Title 15, and the provisions  
19 of Title 15 apply to [sections 14 through 26].

20 NEW SECTION. Section 30. Coordination instruction. If  
21 [LC 981] is passed and approved and if it includes a section  
22 adopting a uniform tax appeals procedure, then the language  
23 contained in [sections 14 through 26] is void and the  
24 provisions of [LC 981] govern the appeal procedures.

25 NEW SECTION. Section 31. Applicability. (1) [Sections

1 1 through 13] apply to forest practices conducted after  
2 October 1, 1992.

3 (2) [Sections 14 through 26] apply to forest products  
4 harvested after December 31, 1991.

5 NEW SECTION. Section 32. Effective date. [This act] is  
6 effective on passage and approval.

-End-