

HOUSE BILL 984

Introduced by Bardanouve

3/08	Introduced
3/08	Referred to Natural Resources
3/09	First Reading
3/09	Fiscal Note Requested
3/15	Fiscal Note Received
3/20	Fiscal Note Printed
3/21	Hearing
3/27	Tabled in Committee

1 HOUSE BILL NO. 984
 2 INTRODUCED BY Ms. Whalen
 3 Kudry
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
 5 MONTANA FOREST PRACTICES ACT; REQUIRING THE BOARD OF LAND
 6 COMMISSIONERS TO ADOPT RULES ESTABLISHING BEST MANAGEMENT
 7 PRACTICES FOR THE CONDUCT OF FOREST PRACTICES; ESTABLISHING
 8 A FOREST PRACTICES ADVISORY COMMITTEE; REQUIRING THAT STATE
 9 FORESTS BE MANAGED FOR SUSTAINED YIELD; PROVIDING PENALTIES
 10 FOR NONCOMPLIANCE; ESTABLISHING A FOREST PRACTICES ACCOUNT;
 11 CREATING A TIMBER SEVERANCE TAX FOR THE PURPOSE OF ENFORCING
 12 BEST MANAGEMENT PRACTICES FOR FORESTRY; AND PROVIDING AN
 13 IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

14
15 STATEMENT OF INTENT

16 It is the intent of the legislature that the board of
 17 land commissioners adopt rules establishing best management
 18 practices for forestry. In preparation for drafting the
 19 rules, the board and the forest practices advisory committee
 20 shall consult with forestry officials from federal, state,
 21 and private agencies and organizations involved in forest
 22 management; review the regulations of other states; consider
 23 the experiences and recommendations of persons who have
 24 developed, administered, and been subject to these
 25 regulations; and consider recent research on the effects of

1 forest practices on soils and watersheds.

2 Education and information are important components of an
 3 effective forest management program. Accordingly, it is the
 4 intent of the legislature that the department of state lands
 5 coordinate the implementation of [sections 1 through 9] with
 6 the best management practices notification, consultation,
 7 and informational requirements contained in Title 76,
 8 chapter 13, part 1.

9 The definition of best management practices in [section
 10 3] includes practices to prevent or reduce air pollution.
 11 The legislature finds that, particularly in some communities
 12 and in class I airsheds, current efforts to coordinate and
 13 manage slash hazard reduction have not satisfactorily
 14 protected air quality. Accordingly, it is the intent of the
 15 legislature that the department of health and environmental
 16 sciences develop new programs and guidelines to more
 17 effectively address air quality problems stemming from the
 18 burning of slash and that the signators to the Montana smoke
 19 management memorandum of agreement cooperate with the
 20 department in this effort.

21 It is the intent of the legislature that the department
 22 of revenue, under the authority granted in 15-1-201, adopt
 23 any rules necessary to achieve the fair and efficient
 24 collection of the timber severance tax provided for in
 25 [section 11]. To the extent practicable, the rules should



1 provide for this collection in a manner compatible with the
2 collection of funds related to the fire hazard reduction
3 agreements and bonds provided for in 76-13-408.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. **Section 1.** Short title. [This act] may be
7 cited as the "Montana Forest Practices Act".

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

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

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

20 (4) The purpose of [sections 1 through 9] is to
21 establish a systematic method for the determination and
22 enforcement of best management practices for forestry so
23 that owners and operators use these practices for the
24 benefit of their operations and of Montana's forest and
25 watershed resources.

1 (5) The purpose of [sections 10 through 22] is to
2 establish an account into which revenue from a timber
3 severance tax may be deposited and from which money may be
4 spent to support a state program to promote and enforce the
5 use of best management practices for forestry.

6 NEW SECTION. **Section 3.** Definitions. As used in
7 [sections 1 through 9], the following definitions apply:

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

13 (a) maintaining the physical and biological
14 productivity of forest lands;

15 (b) preventing or reducing the amount of pollution
16 generated by nonpoint sources to a level compatible with
17 established state and federal air and water quality goals
18 and regulations; and

19 (c) conserving riparian area and aquatic habitat.

20 (2) "Board" means the board of land commissioners
21 provided for in Article X, section 4, of the Montana
22 constitution.

23 (3) "Department" means the department of state lands
24 provided for in 2-15-3201.

25 (4) (a) "Forest practices" means harvesting trees, road

1 construction or reconstruction associated with accessing and
 2 harvesting trees, site preparation for regeneration of a
 3 timber stand, reforestation, and management of logging
 4 slash.

5 (b) The term does not include activities for the
 6 purpose of:

- 7 (i) operating a nursery or a Christmas tree farm;
- 8 (ii) harvesting Christmas trees;
- 9 (iii) harvesting firewood; or
- 10 (iv) cutting trees for personal use by an owner or
 11 operator.

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

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

20 NEW SECTION. **Section 4. Duties of the board -- best**
 21 **management practices.** (1) By October 31, 1992, the board
 22 shall adopt rules for best management practices as minimum
 23 standards for the conduct of forest practices on forest
 24 land. The rules must ensure the maintenance of the physical
 25 and biological productivity of forest land and the

1 protection of water quality. The rules must include minimum
 2 standards for:

- 3 (a) timber harvesting, including harvest volume,
 4 harvest methods, and equipment;
- 5 (b) road construction and reconstruction;
- 6 (c) site preparation and reforestation;
- 7 (d) management activities in riparian areas; and
- 8 (e) use of chemicals.

9 (2) The board shall monitor the implementation of best
 10 management practices and periodically review and update
 11 these rules as it considers necessary.

12 NEW SECTION. **Section 5. Forest practices advisory**
 13 **committee -- membership -- duties.** (1) By October 31, 1991,
 14 the board shall appoint a forest practices advisory
 15 committee composed of seven members qualified by training or
 16 experience to provide technical advice related to best
 17 management practices.

18 (a) The advisory committee must have two members who
 19 are representatives of the general public and one member
 20 from each of the following categories:

- 21 (i) operators;
- 22 (ii) owners;
- 23 (iii) faculty members from the university of Montana
 24 school of forestry;
- 25 (iv) representatives of the department; and

1 (v) representatives of a federal land management
2 agency.

3 (b) The members of the initial advisory committee must
4 be appointed so that the term of two members expires on
5 October 31, 1992, and the term of two members expires on
6 October 31, 1993. Thereafter, advisory committee members
7 shall serve 3-year terms.

8 (c) The committee shall select a chairman from among
9 its members.

10 (2) The forest practices advisory committee shall
11 provide technical assistance to the board on the development
12 and revision of best management practices and the
13 implementation of [sections 1 through 9]. In providing
14 assistance to the board, the advisory committee shall
15 consult with forestry professionals from federal, state, and
16 private agencies and organizations.

17 NEW SECTION. Section 6. Sustained yield -- required
18 for state forests. The amount of timber harvested from state
19 forests provided for in 77-5-101 may not exceed a harvest
20 level that ensures a sustained yield of merchantable timber
21 in perpetuity. The department shall consider the following
22 objectives in managing timber for sustained yield:

23 (1) a stable and regular supply of merchantable timber;
24 and

25 (2) the maintenance and enhancement of the physical and

1 biological productivity of the land.

2 NEW SECTION. Section 7. Civil penalties -- injunctions
3 not barred. (1) A person who violates [sections 1 through 9]
4 or a rule or an order established under the provisions of
5 [sections 1 through 9] is subject to a civil penalty not to
6 exceed \$10,000. Each day of violation constitutes a separate
7 violation.

8 (2) Action under this section does not bar enforcement
9 of [sections 1 through 9] or of a rule promulgated under
10 [sections 1 through 9] by injunction or other appropriate
11 remedy.

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

14 NEW SECTION. Section 8. Injunctions authorized. (1)
15 The department is authorized to commence a civil action
16 seeking appropriate relief, including a permanent or
17 temporary injunction, for a violation that would be subject
18 to an administrative order under [section 9]. An action
19 under this subsection may be commenced in the district court
20 of the county in which the defendant is located or resides
21 or is doing business or any county in which a violation
22 occurs or is threatened if the defendant cannot be located
23 in Montana. The court has jurisdiction to restrain the
24 violation and to require compliance.

25 (2) The department may bring an action for an

1 injunction against the continuation of an alleged violation
 2 of best management practices developed by the department or
 3 of any rule promulgated under [sections 1 through 9]. The
 4 court to which the department applies for an injunction may
 5 issue a temporary injunction if it finds that there is
 6 reasonable cause to believe that the allegations of the
 7 department are true, and it may issue a temporary
 8 restraining order pending action on the temporary
 9 injunction.

10 NEW SECTION. **Section 9. Administrative enforcement.**

11 (1) If the department believes that a violation of [sections
 12 1 through 9], a rule adopted under [sections 1 through 9],
 13 or a condition of approval issued under [sections 1 through
 14 9] has occurred, it may serve written notice of the
 15 violation, by certified mail, on the alleged violator or his
 16 agent. The notice must specify the provision of this part,
 17 the rule, or the condition of approval alleged to have been
 18 violated and the facts alleged to constitute a violation.
 19 The notice must include an order to take necessary
 20 corrective action within a reasonable period of time, which
 21 must be stated in the order. Service by mail is complete on
 22 the date of mailing.

23 (a) The order becomes final unless, within 30 days
 24 after the notice is served, the person named requests in
 25 writing a hearing before the department. On receipt of the

1 request, the department shall schedule a hearing. Service by
 2 mail is complete on the date of mailing.

3 (b) If, after a hearing, the department finds that a
 4 violation has occurred and that the damage to a watershed or
 5 water quality warrants site rehabilitation, it shall either
 6 affirm or modify the order previously issued. If, after a
 7 hearing, the department finds that no violation has occurred
 8 or that site rehabilitation is not warranted, it shall
 9 rescind the order.

10 (2) As an alternative to issuing an order pursuant to
 11 subsection (1), the department may:

12 (a) require the alleged violator to appear before the
 13 department for a hearing, at a time and place specified in
 14 the notice, to answer the charges complained of; or

15 (b) initiate an action under [section 7 or 8].

16 (3) An action initiated under this section may include
 17 an administrative penalty not to exceed \$1,000 for each day
 18 of violation. Administrative penalties collected under this
 19 section must be deposited in the forest practices account
 20 described in [section 10].

21 (4) The department may inspect the work of an operator
 22 to assess compliance with [sections 1 through 9], rules
 23 adopted under [sections 1 through 9], or an order issued
 24 under this section.

25 (5) This section does not prevent the department from

1 seeking voluntary compliance through warning, conference, or
2 any other appropriate means.

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

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

13 NEW SECTION. **Section 10. Forest practices account.** (1)
14 There is a forest practices account in the state special
15 revenue fund provided for in 17-2-102.

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

17 (a) all revenue from the timber severance tax provided
18 for in [section 11]; and

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

23 (3) The account may be used by the department only to
24 administer [sections 1 through 9] and to provide educational
25 materials and programs related to the use of best management

1 practices under Title 76, chapter 13, part 1.

2 NEW SECTION. **Section 11. Timber severance tax.** (1)

3 There is a timber severance tax on all forest products
4 harvested within the state. The tax attaches at the time the
5 forest product is harvested. The tax is owed by the operator
6 and must be paid to the department by the operator as
7 provided in [section 13].

8 (2) The rate of the tax is 75 cents per 1,000 board
9 feet (log scale) or, if timber is cut in a form other than
10 logs, the equivalent thereof.

11 NEW SECTION. **Section 12. Definitions.** As used in
12 [sections 10 through 22], the following definitions apply:

13 (1) "Department" means the department of revenue
14 provided for in 2-15-1301.

15 (2) "Forest products" means trees or their component
16 parts, including but not limited to logs, poles, branches,
17 and bark. The term does not include activities for the
18 purpose of:

19 (a) operating a nursery or a Christmas tree farm;

20 (b) harvesting Christmas trees;

21 (c) cutting trees for personal use by an owner or
22 operator; or

23 (d) cutting firewood.

24 (3) "Operator" means the person who harvests a forest
25 product. An operator may be the owner, the owner's agent, or

1 a person who, through a contractual agreement, is obligated
2 or entitled to harvest forest products, regardless of where
3 the purchase is made or the location of the person's place
4 of business.

5 (4) "Tax" means the timber severance tax provided for
6 in [section 11].

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

10 NEW SECTION. Section 13. Quarterly payment of tax. The
11 operator shall pay the tax quarterly for the periods ending
12 March 31, June 30, September 30, and December 31 of each
13 year. The tax for each quarterly period must be paid to the
14 department on the last day of the second month following the
15 end of the quarter.

16 NEW SECTION. Section 14. Tax return and payment --
17 records. (1) Each operator shall, within 60 days after the
18 end of each quarter, prepare and submit on forms prescribed
19 by the department a return showing the timber volume of
20 forest products harvested during each month of the quarter
21 and during the whole quarter, together with the total amount
22 of tax due to the state for the quarter. The return must be
23 signed by the operator or the president, vice president,
24 treasurer, or managing agent of the business, partnership,
25 or corporation or any other entity covered by the return. A

1 person engaged in harvesting forest products at more than
2 one location within or outside of the state may include all
3 purchases in one return.

4 (2) Each operator shall keep receipts, invoices, log
5 scale tickets, and other pertinent records that the
6 department may require, shall produce them for inspection by
7 the department at any time during normal business hours, and
8 shall keep them for at least 5 years from the due date of
9 the return.

10 NEW SECTION. Section 15. Department determination of
11 tax in absence of return -- penalty and interest -- warrant
12 for distraint. (1) If a person fails, neglects, or refuses
13 to file a return as required and within the time limits
14 established by [section 14], the department shall,
15 immediately after the time has expired, proceed to determine
16 the timber volume of forest products harvested by the
17 operator in this state during the quarter and the tax due to
18 the state from the operator for the quarter.

19 (2) The department shall add to the amount of the tax a
20 10% penalty plus interest at the rate of 1% a month or
21 fraction thereof computed on the tax and penalty. Interest
22 must be computed from the date the tax was due to the date
23 of payment.

24 (3) The department shall mail to the person responsible
25 for the tax payment a letter setting forth the amount of

1 tax, penalty, and interest due and informing him that a
2 warrant for disclaim may be filed if payment is not made.

3 (4) If all or part of the tax imposed by [sections 10
4 through 22] is not paid when due, the department may issue a
5 warrant for disclaim as provided in Title 15, chapter 1,
6 part 7.

7 NEW SECTION. Section 16. Penalty for violations. A
8 person who fails, neglects, or refuses to file a return in
9 the manner or within the time required, who falsifies any
10 return or other information required under [sections 10
11 through 22], or who violates any other provision of
12 [sections 10 through 22] or a rule adopted to implement
13 [sections 10 through 22] is guilty of a misdemeanor
14 punishable by a fine not to exceed \$1,000 or imprisonment
15 not to exceed 6 months, or both.

16 NEW SECTION. Section 17. Deficiency assessment --
17 hearing -- interest. (1) When the department determines that
18 the tax due is greater than the amount disclosed by the
19 return filed pursuant to [section 14], the department shall
20 mail to the taxpayer a notice of the additional tax proposed
21 to be assessed. Within 30 days after mailing of the notice,
22 the taxpayer may file with the department a written protest
23 against the proposed additional tax, setting forth the
24 grounds upon which the protest is based, and may request an
25 oral hearing. If a protest is not filed, the amount of the

1 additional tax proposed to be assessed becomes final upon
2 the expiration of the 30-day period. If a protest is filed,
3 the department shall hold an oral hearing if requested by
4 the taxpayer and may reconsider the proposed assessment.
5 After consideration of the protest and any evidence
6 presented, the department shall take final action on the
7 protest and mail notice of its action to the taxpayer.

8 (2) When a deficiency is sustained by final action of
9 the department, the department shall mail a notice and
10 demand for payment to the taxpayer. The tax is due 10 days
11 from the date of notice. A deficiency assessment bears
12 interest at the rate of 1% a month or fraction thereof,
13 computed from the original due date of the return required
14 by [section 14]. A certificate by the department of the
15 mailing of the notice specified in this subsection is prima
16 facie evidence of the computation and levy of the deficiency
17 in the taxes and of the giving of the notice.

18 NEW SECTION. Section 18. Statute of limitations. (1)
19 Except as otherwise provided in this section, a deficiency
20 may not be assessed with respect to the year for which a
21 return is filed unless the notice of additional tax is
22 mailed within 5 years from the date the return was filed.
23 For the purposes of this section, a return filed before the
24 last day prescribed for filing is considered as filed on the
25 last day. If the taxpayer, before the expiration of the

1 period prescribed for assessment of the tax, consents in
 2 writing to an assessment after that time, the tax may be
 3 assessed at any time prior to the expiration of the period
 4 agreed upon.

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

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

24 NEW SECTION. **Section 19.** Credit for overpayment --
 25 interest on overpayment. (1) If the department determines

1 that the amount of tax, penalty, or interest due for any
 2 taxable period is less than the amount paid, the amount of
 3 the overpayment must be credited against any tax, penalty,
 4 or interest then due from the taxpayer and the balance must
 5 be refunded to the taxpayer or its successor through
 6 reorganization, merger, or consolidation or to its
 7 shareholders upon dissolution.

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

19 (a) if the overpayment is refunded within 6 months from
 20 the date the return is due or from the date the return is
 21 filed, whichever is later; or

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

23 (3) A payment not made incident to the discharge of an
 24 actual tax liability or one reasonably assumed to be imposed
 25 by [sections 10 through 22] may not be considered an

1 overpayment with respect to which interest is allowable.

2 NEW SECTION. **Section 20.** Application for refund --
3 appeal from denial. If the department disallows any claim
4 for refund, it shall notify the taxpayer accordingly. Thirty
5 days from the mailing of the notice, the department's action
6 becomes final unless within the 30-day period the taxpayer
7 appeals in writing from the action of the department to the
8 state tax appeal board. If an appeal is made, the board
9 shall grant the taxpayer an oral hearing. After
10 consideration of the appeal and evidence presented, the
11 board shall mail notice to the taxpayer of its
12 determination. The board's determination is final when it
13 mails notice of its action to the taxpayer.

14 NEW SECTION. **Section 21.** Closing agreements. (1) The
15 director of revenue or a person authorized in writing by him
16 is authorized to enter into an agreement with a taxpayer
17 relating to the liability of the taxpayer in respect to the
18 taxes imposed by [sections 10 through 22] for any period.

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

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

25 (b) in any suit, action, or proceeding under the

1 agreement or any determination, assessment, collection,
2 payment, abatement, refund, or credit made in accordance
3 with the agreement, the agreement may not be annulled,
4 modified, set aside, or disregarded.

5 NEW SECTION. **Section 22.** Disposition of tax. The tax
6 collected under [sections 10 through 22] must be deposited
7 in the forest practices account administered by the
8 department of state lands and provided for in [section 10].

9 NEW SECTION. **Section 23.** Codification instruction. (1)
10 [Sections 1 through 9] are intended to be codified as an
11 integral part of Title 76, chapter 13, and the provisions of
12 Title 76, chapter 13, apply to [sections 1 through 9].

13 (2) [Sections 10 through 22] are intended to be
14 codified as an integral part of Title 15, and the provisions
15 of Title 15 apply to [sections 10 through 22].

16 NEW SECTION. **Section 24.** Coordination instruction. If
17 [LC 981] is passed and approved and if it includes a section
18 adopting a uniform tax appeal procedure, then the language
19 contained in [sections 10 through 22] is void and the
20 provisions of [LC 981] govern the appeal procedures.

21 NEW SECTION. **Section 25.** Applicability. (1) [Sections
22 1 through 9] apply to forest practices conducted after
23 October 1, 1992.

24 (2) [Sections 10 through 22] apply to forest products
25 harvested after December 31, 1991.

LC 1274/01

1 NEW SECTION. **Section 26.** Effective date. [This act] is
2 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 HB0984, as introduced.

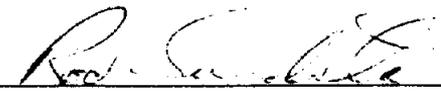
DESCRIPTION OF PROPOSED LEGISLATION:

This bill establishes the Montana Forest Resources Management Act; requires the Board of Land Commissioners to adopt rules establishing best management practices for the conduct of forest practices; establishes a forest practices advisory committee; requires state forests to be managed for sustained yield; provides penalties for noncompliance; establishes a forest practices account; creates a \$0.75 per 1000 board foot timber severance tax for the purpose of enforcing best management practices for forestry.

ASSUMPTIONS:

Department of State Lands:

1. DSL will be responsible for: adopting and publishing rules establishing best management practices (BMPs) for the maintenance of physical and biological productivity of forest land and the protection of water quality; establishing and maintaining an advisory committee to assist in the development of best management practices; providing information and education to landowners and operators regarding implementation of best management practices; sampling forest practice operations to identify practices not in BMP compliance; inspecting cases of reported noncompliance; and enforcing penalties and serving orders for rehabilitation for damage caused by violations.
2. Resources for overall management of this program are not currently available. One full-time position would be necessary to draft rules, develop and maintain guidelines for state-wide operations and supervise program management staff.
3. Also, 1.00 FTE BMP information specialist will be necessary to develop and provide educational programs and training workshops on implementation of BMP rules for timber operators, landowners, timber sale contract administrators, conservation district personnel, DSL employees and others. A 0.25 FTE clerk is added for office work.
4. Actual field work would include accepting notification of forest practice activity as called for in the bill; investigating reports of noncompliance; sampling forest practice operations to identify practices not in BMP compliance; and enforcing rehabilitation and other penalties.
5. Enforcement of BMPs would require approximately one inspector for each of the three western land offices and one for all eastern land offices (total of 4.00 FTE). In addition, one enforcement officer would be required to conduct law enforcement related to violations.
6. Office space does not currently exist for the additional employees at field offices. Office space at three field offices would be approximately \$25,000.
7. Legal staff totaling 0.40 FTE would be necessary to perform hearing officer functions for hearings under Section 9 (1) (b), represent the department in these hearings, in judicial proceedings to collect civil penalties under section 7, and in judicial proceedings for injunction pursuant to section 8. Approximately 260 compliance inspections per year will result in 26 violation citations, 6 site rehabilitation orders, 1 hearing, .33 district court appeals, 3 civil penalty court cases, and .5 injunction actions.


ROD SUNDSTED, BUDGET DIRECTOR 3-20-94
Office of Budget and Program Planning DATE


BRUCE MEASURE, PRIMARY SPONSOR 3-20-94 DATE
Fiscal Note for HB0984, as introduced HB 984-1

8. Enforcement activities would not begin until at least the second year of the biennium.
9. Salaries were calculated on the FY91 pay matrix, no step increases were included and benefits were assumed to be 15% of salaries + \$1,800.
10. The annual average total timber harvest for the past five years from private, federal and state lands in Montana is 1,246,518 MBF (thousand board feet), not including firewood.
11. Future harvest levels are estimated to be the same as the past five-year average.
12. No attempt was made to estimate revenues from penalties, interest, or any source other than the tax itself.

Department of Revenue:

13. Initial tax collections would begin during the fourth quarter of FY92.
14. The proposed legislation would result in an additional 2.00 FTE (grades 14 and 8) to administer the tax program in the Department of Revenue.
15. Data processing systems development and modification would require an additional 2.00 FTE during FY92 only.
16. The administrative costs to collect the timber severance tax would be a general fund expense.

FISCAL IMPACT:

Department of State Lands:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
F.T.E.	0.00	2.25	2.25	0.00	7.65	7.65
Personal Services	0	61,675	61,675	0	197,420	197,420
Operating Costs	0	51,900	51,900	0	61,900	61,900
Capital Expenses	0	15,000	15,000	0	60,000	60,000
Total	0	128,575	128,575	0	319,320	319,320
<u>Funding:</u>						
State Special	0	128,575	128,575	0	319,320	319,320

Department of Revenue:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	4.00	4.00	0.00	2.00	2.00
Personal Services	0	115,690	115,690	0	45,690	45,690
Operating Expenses	0	11,265	11,265	0	5,900	5,900
Equipment Expenses	0	16,785	16,785	0	0	0
Total	0	143,740	143,740	0	51,590	51,590
<u>Funding:</u>						
General Fund	0	143,740	143,740	0	51,590	51,590

Revenues:

Timber Severance Tax (02)	0	233,722	233,722	0	934,888	934,888
General Fund Impact (decrease)			(143,740)			(51,590)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. If the number of forest practices covered by this act increases significantly, additional resources will be required to continue to carry out the intent of the act.
2. If the estimated state-wide harvest should significantly decline in the future, additional severance taxes may be required to carry out the intent of the act.

TECHNICAL NOTES:

1. Measurement of commercial timber scaling weighing in Montana is done in a manner which best fits the needs of the parties in the transaction and the needs of the primary processing mills. It is not regulated except by individual contract nor are there any uniform standards for conversions to board foot volume when other measures are used. In other words, there is no standard or uniform manner in which board foot volume is calculated in Montana. In many cases the timber is delivered from company-owned lands to company-owned processing plants. This presents two problems: first, the material not measured to determine volume would now require measurement and the additional costs for this measurement would have to be borne by the company; and, second, it is unclear who the initial purchaser is in these types of situations and who would have the responsibility to collect and report the tax.
2. Other laws already exist which address regulation of some air and water quality aspects of forest practices. It is unclear how HB0984 relates to current laws.