

HOUSE BILL 991

Introduced by Dolezal, et al.

3/14	Introduced
3/14	Referred to Natural Resources
3/14	First Reading
3/14	Fiscal Note Requested
3/19	Fiscal Note Received
3/20	Fiscal Note Printed
3/21	Hearing
3/27	Tabled in Committee

**HOUSE** BILL NO. **991**  
 INTRODUCED BY Doreal Whalen / Roney

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
 5 MONTANA FORESTS FOR THE FUTURE ACT; PROVIDING THE BOARD OF  
 6 LAND COMMISSIONERS WITH RULEMAKING AUTHORITY; PROVIDING  
 7 PENALTIES FOR NONCOMPLIANCE; ESTABLISHING A FOREST PRACTICES  
 8 ENFORCEMENT ACCOUNT; AND CREATING A TIMBER SEVERANCE TAX."  
 9

10 STATEMENT OF INTENT

11 A statement of intent is required for this bill in order  
 12 to provide direction to the board of land commissioners in  
 13 adopting regulations to implement [sections 1 through 9]. It  
 14 is the intent of the legislature that the regulations  
 15 adopted pursuant to [section 4] protect water quality by  
 16 limiting water yield and sediment production and maintaining  
 17 the scenic and visual qualities of the state's forested  
 18 lands. It is the intent of the legislature that the rules  
 19 adopted by the board prohibit the harvest practice of  
 20 clearcutting except in monotypic stands of timber in which  
 21 the practice of clearcutting promotes improved regeneration,  
 22 such as in stands of lodgepole pine. In preparation for  
 23 drafting the rules, the board shall consult with forestry  
 24 officials from federal, state, and private agencies and  
 25 organizations involved in forest management.

1 It is the intent of the legislature that the department  
 2 of revenue, under the authority granted in 15-1-201, adopt  
 3 any rules necessary to achieve the fair and efficient  
 4 collection of the timber severance tax provided for in  
 5 [section 10]. To the extent practicable, the rules should  
 6 provide for this collection in a manner compatible with the  
 7 collection of funds related to the fire hazard reduction  
 8 agreements and bonds provided for in 76-13-408.  
 9

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

11 NEW SECTION. **Section 1.** Short title. [Sections 1  
 12 through 9] may be cited as the "Montana Forests for the  
 13 Future Act".

14 NEW SECTION. **Section 2.** Definitions. As used in  
 15 [sections 1 through 9], the following definitions apply:

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

19 (2) "Clearcutting" means a method of harvest that  
 20 removes 50% or more of the canopy cover of mature trees.

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

23 (4) "Mixed conifers" means a stand of timber that  
 24 contains more than one species of tree from the order  
 25 Coniferales.

1        **NEW SECTION. Section 3. Prohibition on clearcutting.**

2        The forest practice of clearcutting is prohibited in timber  
3        stands of mixed conifers.

4        **NEW SECTION. Section 4. Rulemaking.** The board shall  
5        adopt rules implementing [sections 1 through 9].

6        **NEW SECTION. Section 5. Enforcement.** (1) A person who  
7        violates [sections 1 through 9] or a rule or order adopted  
8        under the provisions of [sections 1 through 9] is subject to  
9        a civil penalty not to exceed \$10,000. Each day of violation  
10       constitutes a separate violation.

11       (2) Action under this section does not bar enforcement  
12       of [sections 1 through 9] or of rules or orders issued under  
13       [sections 1 through 9] by injunction or other appropriate  
14       remedy.

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

17       (4) A person who violates [section 3], a rule adopted  
18       pursuant to [section 4], or an order issued under [section  
19       6] shall forfeit the value of the timber harvested in the  
20       area in which the violation occurred.

21       **NEW SECTION. Section 6. Compliance orders.** A person  
22       who violates a condition, limitation, standard, or other  
23       requirement established pursuant to [sections 1 through 9]  
24       may be served with a compliance order issued by the  
25       department. The order must specify the condition,

1       limitation, standard, or other requirement violated and must  
2       set a time for compliance. However, in establishing a time  
3       for compliance, the department shall take into account the  
4       seriousness of the violation and any good faith efforts that  
5       have been made to comply with the condition, limitation,  
6       standard, or other requirement that has been violated. The  
7       compliance order issued under this section must be served  
8       either personally by a person qualified to perform service  
9       under the Montana Rules of Civil Procedure or by certified  
10       mail.

11       **NEW SECTION. Section 7. Injunctions authorized.** The  
12       department is authorized to commence a civil action seeking  
13       appropriate relief, including a permanent or temporary  
14       injunction, for a violation that would be subject to a  
15       compliance order under [section 6]. An action under this  
16       section may be commenced in the district court of the county  
17       in which the defendant is located or resides or is doing  
18       business or any county where a violation occurs or is  
19       threatened if the defendant cannot be located in Montana.  
20       The court has jurisdiction to restrain the violation and to  
21       require compliance.

22       **NEW SECTION. Section 8. Criminal penalties.** A person  
23       who willfully or negligently violates [sections 1 through 9]  
24       or any regulation or standard established pursuant to this  
25       chapter is guilty of an offense and is subject to a fine not

1 to exceed \$10,000 for each day of violation or imprisonment  
 2 for not more than 1 year, or both. Following an initial  
 3 conviction under this section, subsequent convictions  
 4 subject a person to a fine of not more than \$20,000 for each  
 5 day of violation or imprisonment for not more than 2 years,  
 6 or both.

7 **NEW SECTION. Section 9. Forest practices enforcement**  
 8 **account.** (1) There is a forest practices enforcement special  
 9 revenue account within the state special revenue fund  
 10 established in 17-2-102.

11 (2) Revenue from the timber severance tax provided for  
 12 in [section 10] must be deposited in the forest practices  
 13 enforcement account.

14 (3) The department shall spend funds deposited in the  
 15 forest practices enforcement account to enforce the  
 16 provisions of or regulations or standards adopted under  
 17 [sections 1 through 9].

18 **NEW SECTION. Section 10. Timber severance tax.** (1)  
 19 There is a timber severance tax on all forest products  
 20 harvested within the state. The tax attaches at the time the  
 21 forest product is harvested. The tax is owed by the operator  
 22 and must be paid to the department by the operator as  
 23 provided in [section 12].

24 (2) The rate of the tax is 15 cents per 1,000 board  
 25 feet (log scale) or, if timber is cut in a form other than

1 logs, the equivalent thereof.

2 **NEW SECTION. Section 11. Definitions.** As used in  
 3 [sections 10 through 21], the following definitions apply:

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

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

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

11 (b) harvesting Christmas trees;

12 (c) cutting trees for personal use by an owner or  
 13 operator; or

14 (d) cutting firewood.

15 (3) "Operator" means the person who harvests the forest  
 16 product. An operator may be the owner, the owner's agent, or  
 17 a person who, through a contractual agreement, is obligated  
 18 or entitled to harvest forest products, regardless of where  
 19 the purchase is made or the location of the person's place  
 20 of business.

21 (4) "Tax" means the timber severance tax provided for  
 22 in [section 10].

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

1        NEW SECTION. **Section 12.** Quarterly payment of tax. The  
 2 operator shall pay the tax quarterly for the periods ending  
 3 March 31, June 30, September 30, and December 31 of each  
 4 year. The tax for each quarterly period must be paid to the  
 5 department on the last day of the second month following the  
 6 end of the quarter.

7        NEW SECTION. **Section 13.** Tax return and payment --  
 8 records. (1) Each operator shall, within 60 days after the  
 9 end of each quarter, prepare and submit on forms prescribed  
 10 by the department a return showing the timber volume of  
 11 forest products harvested during each month of the quarter  
 12 and during the whole quarter, together with the total amount  
 13 of tax due to the state for the quarter. The return must be  
 14 signed by the operator or the president, vice president,  
 15 treasurer, or managing agent of the business, partnership,  
 16 or corporation or any other entity covered by the return. A  
 17 person engaged in harvesting forest products at more than  
 18 one location within or outside of the state may include all  
 19 purchases in one return.

20        (2) Each operator shall keep receipts, invoices, log  
 21 scale tickets, and other pertinent records that the  
 22 department may require, shall produce them for inspection by  
 23 the department at any time during normal business hours, and  
 24 shall keep them for at least 5 years from the due date of  
 25 the return.

1        NEW SECTION. **Section 14.** Department determination of  
 2 tax in absence of return -- penalty and interest -- warrant  
 3 for distraint. (1) If a person fails, neglects, or refuses  
 4 to file a return as required and within the time limits  
 5 established by [section 13], the department shall,  
 6 immediately after the time has expired, proceed to determine  
 7 the timber volume harvested by the operator in this state  
 8 during the quarter and the tax due to the state from the  
 9 operator for the quarter.

10        (2) The department shall add to the amount of the tax a  
 11 10% penalty plus interest at the rate of 1% a month or  
 12 fraction thereof computed on the tax and penalty. Interest  
 13 must be computed from the date the tax was due to the date  
 14 of payment.

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

19        (4) If all or part of the tax imposed by [sections 10  
 20 through 21] is not paid when due, the department may issue a  
 21 warrant for distraint as provided in Title 15, chapter 1,  
 22 part 7.

23        NEW SECTION. **Section 15.** Penalty for violations. A  
 24 person who fails, neglects, or refuses to file a return in  
 25 the manner or within the time required, who falsifies any

1 return or other information required under [sections 10  
2 through 21], or who violates any other provision of  
3 [sections 10 through 21] or rules adopted to implement  
4 [sections 10 through 21] is guilty of a misdemeanor  
5 punishable by a fine not to exceed \$1,000 or imprisonment  
6 not to exceed 6 months, or both.

7 NEW SECTION. Section 16. Deficiency assessment --  
8 hearing -- interest. (1) When the department determines that  
9 the tax due is greater than the amount disclosed by the  
10 return filed pursuant to [section 13], the department shall  
11 mail to the taxpayer a notice of the additional tax proposed  
12 to be assessed. Within 30 days after mailing of the notice,  
13 the taxpayer may file with the department a written protest  
14 against the proposed additional tax, setting forth the  
15 grounds upon which the protest is based, and may request an  
16 oral hearing. If a protest is not filed, the amount of the  
17 additional tax proposed to be assessed becomes final upon  
18 the expiration of the 30-day period. If a protest is filed,  
19 the department shall hold an oral hearing if requested by  
20 the taxpayer and may reconsider the proposed assessment.  
21 After consideration of the protest and any evidence  
22 presented, the department shall take final action on the  
23 protest and mail notice of its action to the taxpayer.

24 (2) When a deficiency is sustained by final action of  
25 the department, the department shall mail a notice and

1 demand for payment to the taxpayer. The tax is due 10 days  
2 from the date of notice. A deficiency assessment bears  
3 interest at the rate of 1% a month or fraction thereof,  
4 computed from the original due date of the return required  
5 by [section 13]. A certificate by the department of the  
6 mailing of the notice specified in this subsection is prima  
7 facie evidence of the computation and levy of the deficiency  
8 in the taxes and of the giving of the notice.

9 NEW SECTION. Section 17. Statute of limitations. (1)  
10 Except as otherwise provided in this section, a deficiency  
11 may not be assessed with respect to the year for which a  
12 return is filed unless the notice of additional tax is  
13 mailed within 5 years from the date the return was filed.  
14 For the purposes of this section, a return filed before the  
15 last day prescribed for filing is considered as filed on the  
16 last day. If the taxpayer, before the expiration of the  
17 period prescribed for assessment of the tax, consents in  
18 writing to an assessment after that time, the tax may be  
19 assessed at any time prior to the expiration of the period  
20 agreed upon.

21 (2) A refund or credit may not be paid or allowed with  
22 respect to the year for which a return is filed after 5  
23 years from the last day prescribed for filing the return or  
24 after 1 year from the date of the overpayment, whichever is  
25 later, unless before the expiration of the period the

1 taxpayer files a claim or unless the department has  
 2 determined the existence of the overpayment and has approved  
 3 the refund or credit. If the taxpayer has agreed in writing  
 4 under the provisions of subsection (1) to extend the time  
 5 within which the department may propose an additional  
 6 assessment, the period within which a claim for refund or  
 7 credit may be filed or allowed is automatically extended.

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

15 **NEW SECTION. Section 18. Credit for overpayment --**  
 16 **interest on overpayment.** (1) If the department determines  
 17 that the amount of tax, penalty, or interest due for any  
 18 taxable period is less than the amount paid, the amount of  
 19 the overpayment must be credited against any tax, penalty,  
 20 or interest then due from the taxpayer and the balance must  
 21 be refunded to the taxpayer or its successor through  
 22 reorganization, merger, or consolidation or to its  
 23 shareholders upon dissolution.

24 (2) Except as provided in subsections (2)(a) and  
 25 (2)(b), interest is allowed on overpayments at the same rate

1 as is charged on delinquent taxes due from the due date of  
 2 the return or from the date of overpayment, whichever date  
 3 is later, to the date the department approves refunding or  
 4 crediting of the overpayment. Interest may not accrue during  
 5 any period in which the processing of a claim for refund is  
 6 delayed more than 30 days by reason of failure of the  
 7 taxpayer to furnish information requested by the department  
 8 for the purpose of verifying the amount of the overpayment.  
 9 Interest is not allowed:

10 (a) if the overpayment is refunded within 6 months from  
 11 the date the return is due or from the date the return is  
 12 filed, whichever is later; or

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

14 (3) A payment not made incident to the discharge of an  
 15 actual tax liability or one reasonably assumed to be imposed  
 16 by [sections 10 through 21] may not be considered an  
 17 overpayment with respect to which interest is allowable.

18 **NEW SECTION. Section 19. Application for refund --**  
 19 **appeal from denial.** If the department disallows any claim  
 20 for refund, it shall notify the taxpayer accordingly. Thirty  
 21 days from the mailing of the notice, the department's action  
 22 becomes final unless within the 30-day period the taxpayer  
 23 appeals in writing from the action of the department to the  
 24 state tax appeal board. If an appeal is made, the board  
 25 shall grant the taxpayer an oral hearing. After

1 consideration of the appeal and evidence presented, the  
 2 board shall mail notice to the taxpayer of its  
 3 determination. The board's determination is final when it  
 4 mails notice of its action to the taxpayer.

5 NEW SECTION. Section 20. Closing agreements. (1) The  
 6 director of revenue or a person authorized in writing by him  
 7 is authorized to enter into an agreement with a taxpayer  
 8 relating to the liability of the taxpayer in respect to the  
 9 taxes imposed by [sections 10 through 21] for any period.

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

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

16 (b) in any suit, action, or proceeding under the  
 17 agreement or any determination, assessment, collection,  
 18 payment, abatement, refund, or credit made in accordance  
 19 with the agreement, the agreement may not be annulled,  
 20 modified, set aside, or disregarded.

21 NEW SECTION. Section 21. Disposition of tax. The tax  
 22 collected under [sections 10 through 21] must be deposited  
 23 in the forest practices enforcement account administered by  
 24 the department of state lands and provided for in [section  
 25 9].

1 NEW SECTION. Section 22. Codification instruction. (1)  
 2 [Sections 1 through 9] are intended to be codified as an  
 3 integral part of Title 76, chapter 13, and the provisions of  
 4 Title 76, chapter 13, apply to [sections 1 through 9].

5 (2) [Sections 10 through 21] are intended to be  
 6 codified as an integral part of Title 15, and the provisions  
 7 of Title 15 apply to [sections 10 through 21].

8 NEW SECTION. Section 23. Coordination instruction. If  
 9 [LC 981] is passed and approved and if it includes a section  
 10 adopting a uniform tax appeals procedure, then the relevant  
 11 language contained in [sections 10 through 21] is void and  
 12 the provisions of [LC 981] govern the appeal procedure.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0991, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill establishes the Montana Forests for the Future Act and provides the Board of Land Commissioners with rule making authority to develop, implement and enforce a prohibition on the harvest practice of clearcutting, except in monotypic stands. The bill also establishes a \$0.15/1000 board feet timber severance tax to enforce the act.

ASSUMPTIONS:

Department of State Lands:

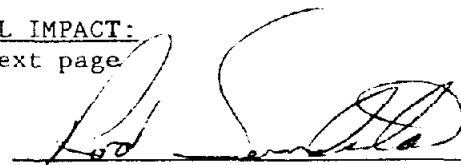
1. DSL will be responsible for adopting and publishing rules establishing best management practices (BMP) for the maintenance of physical and biological productivity of forest land and the protection of water quality; establishing and maintaining an advisory committee to assist in the development of 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, investigate reports of noncompliance, and enforce penalties.
3. Enforcement activities would not begin until a least the second year of the biennium. Resources would be necessary in the first year of the biennium to draft and adopt rules and develop procedures to implement them.
4. Salaries were calculated on the FY91 pay matrix, no step increases were included and benefits were assumed to be 15% of salaries + \$1,800.
5. 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.
6. Future harvest levels are estimated to be the same as the past five-year average.
7. No attempt was made to estimate revenues from penalties, interest, or any source other than the tax itself.

Department of Revenue:

8. The effective and applicability date of the legislation is October 1, 1991. The tax would apply to timber harvested during the second quarter of FY92 and the first tax collections would occur during the third quarter of FY92.
9. The proposed legislation would require an additional 2.00 FTE permanent staff (grades 14 and 8) to administer the tax program in the Department of Revenue.
10. Data processing systems development and modification would require an additional 2.00 FTE during FY92 only.
11. The administrative costs to collect the timber severance tax would be a general fund expense.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

EDWARD J. DOLEZAL, PRIMARY SPONSOR      DATE

Fiscal Note for HB0991, as introduced

HB 991-1

FISCAL IMPACT:

Department of State Lands:

<u>Expenditures:</u>	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>
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	25,590	25,590	0	25,590	25,590
Operating Costs	0	8,000	8,000	0	16,000	16,000
Capital Expenses	0	15,000	15,000	0	0	0
Total	0	48,590	48,590	0	41,590	41,590
<u>Funding:</u>						
State Special	0	48,590	48,590	0	41,590	41,590

Department of Revenue:

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	93,489	93,489	0	186,978	186,978
General Fund Impact (decrease)			(143,740)			(51,590)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The ongoing general fund cost will be approximately \$51,590 per year.

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. The definition of mixed conifers would include virtually all forest stands in Montana and would not meet the intent of excepting monotypic stands such as lodgepole pine.
3. Section 5 requires a civil penalty not to exceed \$10,000 for each day of the violation. It is not clear how that might apply to an activity such as a clearcut.