

SENATE BILL 193

Introduced by Halligan

1/24	Introduced
1/25	Referred to Natural Resources
1/25	First Reading
1/25	Fiscal Note Requested
1/31	Fiscal Note Printed
1/31	fiscal Note Received
2/23	Tabled in Committee

Senate BILL NO. 193

INTRODUCED BY *Sally*

1 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FORESTRY
 2 INCENTIVES PROGRAM FOR NONINDUSTRIAL PRIVATE FOREST
 3 LANDOWNERS; DEFINING ELIGIBLE FORESTRY PRACTICES AND
 4 ELIGIBLE FOREST LANDOWNERS; PROVIDING FOR AGREEMENTS BETWEEN
 5 THE DEPARTMENT OF STATE LANDS AND ELIGIBLE FOREST LANDOWNERS
 6 FOR COST-SHARING PAYMENTS FROM THE DEPARTMENT; PROVIDING FOR
 7 THE TERMINATION OF COST-SHARING AGREEMENTS; PROVIDING FOR
 8 THE RECOVERY OF COST-SHARING PAYMENTS; PROVIDING FOR A
 9 PROCEDURE TO APPEAL DEPARTMENT OF STATE LAND DETERMINATIONS;
 10 ESTABLISHING A FORESTRY INCENTIVES PROGRAM FUND; AND
 11 ESTABLISHING A FORESTRY INCENTIVES ADVISORY COMMITTEE."

STATEMENT OF INTENT

12 A statement of intent is required for this bill because
 13 [section 4] grants rulemaking authority to the department of
 14 state lands for the administration of the forestry
 15 incentives program.

16 The legislature intends that the rules adopted by the
 17 department should, at a minimum, address the following:

18 (1) the definitions of forestry practices that may be
 19 included as eligible forestry practices;

20 (2) the forest landowners who may qualify for

1 cost-sharing payments;

2 (3) the forms to be used by the forest landowner to
 3 apply for cost-sharing payments and the procedures for
 4 evaluating the applications;

5 (4) the establishment of a priority system in awarding
 6 cost-sharing payments and the appropriate amount of the
 7 cost-sharing payments;

8 (5) the methods for establishing appropriate regions
 9 for determining the costs of forestry practices;

10 (6) the process by which a forest landowner may appeal
 11 the denial of an application for cost-sharing payments or
 12 the termination of an agreement; and

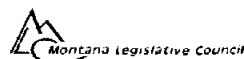
13 (7) the methods for soliciting money from private
 14 sources.

15 The legislature also intends that the department seek
 16 the advice of the U.S. forest service, the timber industry,
 17 private landowners, forestry professionals, and the general
 18 public in implementing the provisions of this bill.

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

20 NEW SECTION. **Section 1.** Short title. [Sections 1
 21 through 8] may be cited as the "Forestry Incentives Program
 22 Act".

23 NEW SECTION. **Section 2.** Legislative findings and
 24 declarations of purpose. (1) The legislature finds that:
 25



1 (a) there are over 3 million acres of nonindustrial
2 private forest land in Montana, comprising 24% of the
3 commercial forest land in the state;

4 (b) the average annual harvest from these lands between
5 1980 and 1989 was approximately 143 million board feet a
6 year, or approximately 13% of the total timber harvested in
7 the state during the same period;

8 (c) during the next 10 years, the amount of timber
9 available for harvesting from federal, state, and industrial
10 forests is expected to decline because of increasing
11 environmental protection and declining inventories from some
12 of these sources;

13 (d) the demand for timber from nonindustrial private
14 forest lands is high and is expected to increase;

15 (e) private landowners with sufficient knowledge of
16 forestry and natural resource management may be expected to
17 manage their forested properties in a manner that protects
18 the interests of the landowner as well as the basic
19 resources supporting the forests;

20 (f) nonindustrial private forests that are managed to
21 protect the interests of the landowner and the basic
22 resources supporting the forests will yield on a continuing
23 basis the products and amenities desired by society; and

24 (g) persons or groups who may benefit directly from the
25 wise management of nonindustrial private forest lands and

1 who therefore may reasonably be expected to share in the
2 cost of the management are forest products manufacturers,
3 recreationists, conservation organizations, and the general
4 public.

5 (2) The legislature declares the purpose of [sections 1
6 through 8] is to authorize a program of incentives in which
7 the state will share in the cost to landowners of improving
8 the long-term productivity of the state's nonindustrial
9 private forest land to meet the continuing needs for timber
10 and to contribute to the conservation, protection, and the
11 beneficial use of forest land, water, and related resources
12 of the state.

13 (3) It is further the purpose of [sections 1 through 8]
14 to complement the Forest Stewardship Act of 1990 (16 U.S.C.
15 2101) and to avoid duplication of cost-sharing programs
16 provided under that act.

17 NEW SECTION. **Section 3. Definitions.** As used in
18 [sections 1 through 10], unless the context requires
19 otherwise, the following definitions apply:

20 (1) "Approved forestry practice" means an eligible
21 forestry practice that is proposed by an eligible forest
22 landowner to be implemented on eligible forest land and that
23 the department determines is appropriate to the forest land
24 for accomplishing the purposes of [sections 1 through 8].

25 (2) "Cost-sharing payment" means the payment made by

1 the department to a landowner for a part of the cost of
2 completing an approved practice on eligible forest land. The
3 amount of the payment is determined in [section 4].

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

6 (4) "Eligible forest land" means contiguous
7 nonindustrial private forest land of 5 acres or more in one
8 ownership that is capable of producing timber that can be
9 harvested in commercial quantity and is producing timber
10 unless the trees have been removed by man through harvest,
11 including clearcuts, or by natural disaster, including but
12 not limited to fire. Forest land includes land:

13 (a) that has not been converted to another use; or

14 (b) that has a dedicated use that is evidenced by a
15 statement of intent by the owner for the eventual harvest of
16 timber.

17 (5) "Eligible forest landowner" means an individual,
18 corporation, partnership, association, company, firm, joint
19 venture, syndicate, or trust owning eligible forest land.
20 Eligible forest landowner does not include:

21 (a) an individual, corporation, partnership,
22 association, company, firm, joint venture, syndicate, or
23 trust engaged in the business of manufacturing forest
24 products of any kind for sale; or

25 (b) a federal, state, or local government agency.

1 (6) "Eligible forestry practice" means a forestry
2 practice used by an eligible landowner that improves the
3 long-term productivity of eligible forest land in the state
4 or that otherwise promotes the purposes of [sections 1
5 through 8]. Eligible forestry practices that a landowner may
6 adopt for the purposes of [sections 1 through 8] include but
7 are not limited to:

8 (a) the development of a plan for the long-term
9 management of the landowner's land by completing a series of
10 workshops sponsored by the Montana forest stewardship
11 cooperative;

12 (b) receiving on-site advice from a service forester of
13 the department or from a certified stewardship adviser
14 before harvesting timber, constructing a road, or otherwise
15 developing the forest land;

16 (c) hiring an independent consulting forester to
17 provide services that include an assessment of forest
18 inventory, silvicultural prescription, harvest unit layout,
19 timber marking, logging system layout, road design and
20 layout, contract writing, and contract administration;

21 (d) the incorporation of best management practices, as
22 provided for in 76-13-131(2)(a)(ii), into contracts
23 governing timber harvest, road construction, or other
24 development on eligible forest lands;

25 (e) the installation of road drainage devices, such as

1 ditches, culverts, drive-through cross-drains, or other
2 devices that control soil erosion, protect water quality,
3 and maintain the value of physical improvements;

4 (f) the construction of bridges or other appropriate
5 stream crossings that are needed to protect water quality
6 and fish habitat;

7 (g) the stabilization of soil by the use of seed and
8 fertilizer, compaction, riprap, slash filter windrows, or
9 other approved methods when appropriate to prevent soil
10 slumps, soil erosion, and water quality impacts during and
11 after road construction;

12 (h) the use of nonburning slash-treatment methods that
13 have been approved by the department to protect air quality;

14 (i) the selection of more costly logging,
15 reforestation, and approved slash-treatment methods that
16 reduce the exposure of mineral soil over less costly
17 alternatives that may cause site disturbance, including soil
18 displacement and noxious weed encroachment;

19 (j) the use of recommended measures to suppress forest
20 insect pest infestations or forest tree diseases that, left
21 untreated, would cause significant damage to forest growth;
22 and

23 (k) the maintenance or reconstruction of physical
24 improvements that protect soil, water, wildlife, and forest
25 resources.

1 (7) "Forestry incentives program fund" means the
2 special state revenue fund established in [section 8].

3 (8) "State forester" means the administrator of the
4 forestry division of the department of state lands.

5 NEW SECTION. **Section 4. Forestry incentives program --**
6 **administration -- duties -- rules.** There is a forestry
7 incentives program administered by the department. The
8 department shall:

9 (1) determine the forestry practices that are eligible
10 for cost-sharing payments under [sections 1 through 8].
11 Forestry practices may include but are not limited to
12 eligible forestry practices defined in [section 3].

13 (2) review applications submitted by eligible forest
14 landowners for cost-sharing payments as provided in [section
15 5];

16 (3) establish allowable cost ranges for eligible
17 forestry practices, based on a periodic review of the costs
18 of forestry practices and taking into account the cost
19 variability by region in the state;

20 (4) divide the state into appropriate regions, with
21 each region designated so as to recognize forest types,
22 marketing areas, topography, soil types, access, and other
23 pertinent factors that influence the cost of forestry
24 practices;

25 (5) establish the minimum number of acres for which a

1 forestry practice is appropriate;

2 (6) determine the total cost of a landowner's forestry
3 practice, within the cost ranges provided for in subsection
4 (3), that may be eligible for cost-sharing payments;

5 (7) determine the amount of the cost, not to exceed 80%
6 of the total cost determined in subsection (6), to be shared
7 with the landowner for each approved forestry practice on a
8 parcel of land;

9 (8) establish a maximum amount, not to exceed the
10 appropriation for the forest incentives program, of
11 cost-sharing payments that any one eligible forest landowner
12 may receive in a year under the provisions of [sections 1
13 through 8];

14 (9) make cost-sharing payments from the forestry
15 incentives program fund established in [section 8] to a
16 landowner after the department has determined that the
17 landowner has satisfactorily completed the forestry
18 practices under the terms of the agreement, as provided for
19 in [section 5];

20 (10) accept donations from private sources to be
21 deposited into the forestry incentives program fund
22 established in [section 8]; and

23 (11) promulgate rules as may be appropriate to
24 administer and enforce the provisions of [sections 1 through
25 8].

1 NEW SECTION. Section 5. Cost-sharing payments --
2 application -- department review -- agreement -- transfer of
3 ownership of land. (1) An eligible forest landowner, as
4 defined in [section 3] may apply, on forms prescribed by the
5 department, for cost-sharing payments. The application must:
6 (a) describe the forestry practices for which
7 cost-sharing payments are requested;
8 (b) provide the legal description of the land on which
9 the forestry practices are proposed to be implemented;
10 (c) describe the method or methods required to
11 implement the forestry practices; and
12 (d) provide the estimated cost of implementing the
13 forestry practices.
14 (2) The application must also include a statement,
15 signed by the landowner, that:
16 (a) the land described in subsection (1)(b) must be
17 maintained as forest land for a period of 20 years; and
18 (b) in the case of joint ownership of forest land, only
19 one application will be submitted by the joint owners for
20 cost-sharing payments.
21 (3) Within 45 days following the receipt of the
22 application from the eligible forest landowner, the
23 department shall review the application and notify him by
24 mail whether the application has been approved for
25 cost-sharing payments. If the department denies the

1 application, the department shall set forth the reasons for
2 the denial. The landowner may appeal the denial as provided
3 in [section 6].

4 (4) If the department approves the application for
5 cost-sharing payments, the application constitutes the
6 agreement between the department and the landowner for
7 cost-sharing payments.

8 (5) (a) Except as provided in subsection (5)(b), if the
9 landowner transfers ownership or changes the use of forest
10 lands on which he has received cost-sharing payments, the
11 landowner shall repay to the department the amount of the
12 cost-sharing payment.

13 (b) In the case of a transfer of ownership, the
14 landowner is not required to repay the cost-sharing payments
15 if the new owner maintains the land as forest land under the
16 terms of the original agreement.

17 **NEW SECTION. Section 6. Appeal -- department response.**

18 (1) A forest landowner whose application for cost-sharing
19 payments is denied by the department may file with the
20 department a written appeal requesting reconsideration of
21 the application. The appeal must be submitted within 30 days
22 after the date the application was denied. The appeal must
23 state the reasons for the appeal and must be accompanied by
24 a copy of the original application.

25 (2) If an appeal is filed, the department shall

1 reconsider the application and, if the landowner has so
2 requested, shall grant the landowner an oral hearing. After
3 consideration of the appeal and the evidence presented at an
4 oral hearing, the department shall, within 45 days following
5 the date that the appeal was received, notify the landowner
6 in writing of its decision and the reasons for the decision.
7 The decision of the department is final.

8 **NEW SECTION. Section 7. Termination of agreement --**
9 **appeal -- recovery -- reduced payments.** (1) The department
10 may terminate the agreement with an eligible forest
11 landowner if it determines that the landowner has failed,
12 without cause, to comply with the provisions of the
13 agreement.

14 (2) The landowner may appeal the termination of the
15 agreement in the same manner as for an appeal under the
16 provisions of [section 6].

17 (3) If the department terminates an agreement with a
18 landowner, it may institute proceedings to recover all or a
19 portion of the cost-sharing payments paid to the landowner.
20 The amounts recovered must be deposited in the forestry
21 incentives program fund established in [section 8].

22 (4) The department may reduce the cost-sharing payment
23 to the landowner or require the landowner to return a
24 portion of the payment if the department determines that the
25 landowner has violated the terms of the agreement but that

1 the violation does not warrant the termination of the
2 agreement.

3 NEW SECTION. Section 8. Fund established. There is
4 within the state special revenue fund a forestry incentives
5 program fund. Money is payable into the fund from state
6 general fund appropriations, donations from private sources
7 and other sources, and the recovery of forestry incentives
8 cost-sharing payments as provided in [section 7].

9 NEW SECTION. Section 9. Forestry incentives advisory
10 committee -- composition -- compensation -- duties. (1)
11 There is a forestry incentives advisory committee. The
12 committee consists of 11 members appointed by the governor,
13 as provided in 2-15-122. The members must be appointed as
14 follows:

- 15 (a) three members from the timber industry;
16 (b) three private forest landowners, one of whom
17 represents the Montana association of conservation
18 districts;
19 (c) three members of the public, appointed at large;
20 and
21 (d) two continuing ex officio members who may not vote
22 on any decision or regulations of the committee:
23 (i) the state forester; and
24 (ii) the administrator of the conservation and resource
25 development division of the department of natural resources

1 and conservation.

2 (2) Except for the ex officio members, appointed
3 members serve staggered terms of 3 years. Initial
4 appointment of members from each group listed in subsection
5 (1)(a) through (1)(c) must be as follows:

- 6 (a) one member for a 1-year term;
7 (b) one member for a 2-year term; and
8 (c) one member for a 3-year term.
9 (3) A member may not serve more than two consecutive
10 terms.

11 (4) Each member of the advisory committee is entitled
12 to be paid \$200 for each day the member is actually and
13 necessarily engaged in the performance of committee duties
14 and is entitled to be reimbursed for travel expenses as
15 provided in 2-18-501 through 2-18-503.

16 (5) The advisory committee shall meet at least once
17 each year to advise the state forester of forestry
18 practices, cost-sharing amounts, rules, and other matters
19 relating to the forestry incentives program.

20 NEW SECTION. Section 10. Contributions. (1) In order
21 to provide additional financial resources for and to enhance
22 the effectiveness of the forestry incentives program, the
23 forestry incentives advisory committee may solicit and
24 accept on behalf of the department of state lands money
25 donated by forest products manufacturers, recreationists,

LC 0213/01

1 conservation organizations, and the general public.

2 (2) Contributions for the benefit of the forestry
3 incentives program must be deposited in the forestry
4 incentives program fund established in [section 8].

5 NEW SECTION. **Section 11.** Codification instruction. (1)
6 [Sections 1 through 8] are intended to be codified as an
7 integral part of Title 76, chapter 13, and the provisions of
8 Title 76, chapter 13, apply to [sections 1 through 8].

9 (2) [Sections 9 and 10] are intended to be codified as
10 an integral part of Title 2, chapter 15, part 32, and the
11 provisions of Title 2, chapter 15, part 32, apply to
12 [sections 9 and 10].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

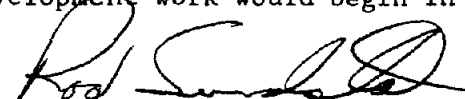
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0193, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would establish a forestry incentives program for non-industrial private landowners. Cost-sharing would be provided for eligible practices. The Department of State Lands would administer the program and approve the cost-share payments. A program fund would be established. The program would rely on the combined support of private contributions and general fund appropriations.

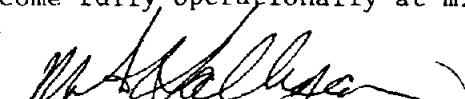
ASSUMPTIONS:

1. 400 to 500 landowners per year will apply for cost-sharing under this program.
2. The Department of State Lands service foresters working in field offices will review the cost-share applications, determine eligibility of landowners and proposed practices, approve or disapprove applications, make necessary field inspections to review applications and certify completion of agreed upon practices, and initiate payments for completed practices under agreement.
3. Each full-time service forester may be able to handle an average of 75 cases per year, provided he or she has sufficient support in the clerical, accounting, and program management functions.
4. One full-time position is needed to draft rules at the request of the advisory council, develop and maintain guidelines for Department of State Lands state-wide operations under the program, and supervise the program management staff.
5. The intent of this program is clearly to find private financial support for the cost-sharing. One full-time position is needed to promote the program to potential sponsors (both in-state and nationally) and solicit donations to the program account.
6. One full-time position is needed to conduct the appeals process, develop and maintain forms and other information used in the program, maintain program records, and train Department of State Lands employees working in the program.
7. One full-time position is needed to perform daily accounting of cost-sharing transactions.
8. The administration of this program will generate additional clerical work at all offices, including receiving the public and preparing correspondence, manuals and informational brochures. The state-wide effect of this additional work is estimated to be 2.0 FTEs to be allocated as needed to support part-time clerical positions at several locations.
9. Private donations or other sources of state special revenue could be matched with general fund appropriations on the basis of a predetermined ratio. For purposes of this fiscal note, the Department of State Lands has assumed the matching ratio is three-fourths state special revenue and one-fourth general fund.
10. The Department of State Lands costs for administration the program should be limited to some reasonable level of 25% of the overall program costs, including the cost-share payments. This means that full implementation of the program as outlined in assumptions 1-8 is contingent upon sufficient funds (totalling roughly 4 times the department's total program administration costs) being deposited to the program account annually.
11. During FY92, only fund-raising work would be done. Provided sufficient private funds were secured, the program development work would begin in FY93, and the program would become fully operationally at mid-year FY93.


 ROD SUNDSTED, BUDGET DIRECTOR

1-30-91
 DATE

Office of Budget and Program Planning


 MIKE HALLIGAN, PRIMARY SPONSOR

V/3/91
 DATE

Fiscal Note for SB0193, as introduced

SB 193

FISCAL IMPACT:

Department of State Lands, Forestry Division:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	1.00	1.00	0.00	7.00	7.00
Personal Services	0	28,711	28,711	0	183,405	183,405
Operating Costs	0	5,000	5,000	0	50,000	50,000
Capital Outlay	0	15,500	15,500	0	108,000	108,000
Total	0	49,211	49,211	0	341,405	341,405
<u>Funding:</u>						
General Fund	0	49,211	49,211	0	85,351	85,351
Forestry Incentives (02)	0	0	0	0	256,054	256,054
Total	0	49,211	49,211	0	341,405	341,405

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The 7.00 FTE in FY93 would represent 2.00 FTE which would be employed for the entire fiscal year and 10 positions which would come on-board in the middle of the fiscal year. Therefore, the FY94 budget would include 12.00 FTE at a cost of approximately \$325,000. With operating costs of approximately \$50,000 the total program costs would be about \$375,000 per year.