

1 House BILL NO. 683
2 INTRODUCED BY Baudenon

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE FIRE
5 HAZARD REDUCTION LAWS BY CLARIFYING THOSE LAWS; REQUIRING
6 PERSONS CLEARING RIGHT OF WAY TO NOTIFY THE DEPARTMENT OF
7 NATURAL RESOURCES AND CONSERVATION OF THE CLEARING;
8 PROVIDING FOR MONTHLY PAYMENTS OF WITHELD MONIES TO REDUCE
9 FIRE HAZARDS; INCREASING THE PERMISSIBLE MAXIMUM OF THE
10 HAZARD REDUCTION PAYMENTS TO THE DEPARTMENT; AMENDING
11 SECTIONS 28-404 THROUGH 28-408, 28-410, AND 28-412, R.C.M.
12 1947."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. There is a new R.C.M. section numbered
16 28-405.1, R.C.M. 1947, that reads as follows:

17 28-403.1. Definitions. As used in this
18 chapter: (1) "Department" means the department of natural
19 resources and conservation, provided for in Title 82A,
20 chapter 15.

21 (2) "Board" means the board of natural resources and
22 conservation, provided for in section 82A-1509.

23 (3) "Person" means an individual, association,
24 partnership, corporation, estate, or any other entity.

25 Section 2. Section 28-404, R.C.M. 1947, is amended to

1 read as follows:
2 "28-404. Reduction or management of fire hazard
3 created by cutting timber. ~~Everyone engaged, or about to~~
4 ~~engage, in the~~ Before cutting of any forest product or
5 conducting standing timber stand improvement such as, but
6 not limited to, thinning, weeding, ~~and~~ or pruning, upon
7 private lands within the state of ~~Montana~~ the person
8 conducting such practice shall provide for the reduction or
9 management of the fire hazard ~~to the property of others~~
10 ~~thus created or~~ to be created by entering into a fire hazard
11 reduction agreement with the department ~~as provided in~~
12 ~~sections 28-408 to 28-412, or and~~ by posting a bond to the
13 state of ~~Montana~~ in such form and for such amount as may
14 be prescribed by the department, ~~of natural resources and~~
15 ~~conservation, provided, however, that the amount of the bond~~
16 ~~so prescribed shall not be in excess of the amount which~~
17 ~~such person would be required to pay under said sections~~
18 ~~28-408 to 28-412, and that the bond shall be~~ conditioned
19 upon full and faithful compliance with all requirements
20 under ~~said sections 28-408 to 28-412, this chapter~~ and the
21 faithful reduction or management of such the fire hazards
22 hazard in the manner prescribed by law, and by rules
23 adopted by the board. Such The bond shall be released upon
24 completion of the work done in compliance with the terms of
25 the bond agreement. ~~The department shall issue~~

1 ~~certificate--of-compliance-with-the-terms-of-this-section-to~~
2 ~~all-persons-who-have-complied-therewith.~~

3 Section 3. Section 28-405, R.C.M. 1947, is amended to
4 read as follows:

5 "28-405. Reduction of slash and forest debris along
6 right of way. ~~Everyone~~ (1) A person clearing right of way
7 for any railroad, public highway, public trail, private
8 road, trail, ditch, dyke, pipeline or wire lines, or any
9 other transmission or transportation utility right of way,
10 except temporary roads located within the boundaries of the
11 cutting area and which are used in the actual logging
12 operations, shall ~~reduce~~ dispose of the hazard resulting
13 from ~~such the~~ clearing or from the cutting of material for
14 the construction of ~~such the~~ public or private utility
15 unless exempted by the department. At least ten (10) days
16 before commencement of the clearing, the person conducting
17 the clearing shall notify the department of commencement of
18 the clearing in the form and manner the department provides.

19 (2) Hazard reduction, including burning where this
20 method of disposal is used, shall be done as rapidly as
21 cutting or clearing progresses; ~~provided-that~~ however, upon
22 application to the department ~~he~~ it may grant a permit
23 extending the time within which ~~such the~~ burning must be
24 done in compliance with ~~all-the-provisions-of~~ this chapter,
25 and chapter 1 of this title relating to burning permits

1 during the closed season.

2 (3) ~~The-provisions-of-the~~ This section ~~shall--apply~~
3 applies to all clearing of rights of way across private
4 land and on behalf of the state, county, highway districts,
5 and road districts, ~~whether the work be is~~ done by day
6 labor, or by contract, and unless unavoidable emergency
7 prevents, provision shall be made by the proper officials
8 conducting, directing, or letting ~~said the~~ work for
9 withholding until it is complete, a sufficient portion of
10 the payment therefor to assure compliance with this ~~act~~
11 chapter.

12 ~~Violations--of--any--of--the-provisions-of-this-section~~
13 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
14 ~~not-less-than-one-hundred-dollars-(\$100)-nor-more--than--one~~
15 ~~thousand-dollars-(\$1,000).~~

16 (4) In addition to the penalty ~~herein~~ provided in
17 section 28-413, the offender may be enjoined, at the
18 instance of the department, from proceeding with ~~such the~~
19 work until the ~~provisions-of~~ this section ~~shall--have~~ has
20 been complied with; and, upon application of the department
21 to any court of competent jurisdiction, a writ of mandate
22 shall issue compelling the offender to fully comply with ~~the~~
23 provisions-whereof, this section."

24 Section 4. Section 28-406, R.C.M. 1947, is amended to
25 read as follows:

1 "28-406. Purchaser will insure compliance, prior to
 2 purchase, will transmit withheld money to
 3 department. ~~penalty~~ The initial purchaser of forest
 4 products which have been cut or are about to be cut from any
 5 private lands within the ~~state--of--Montana,~~ state shall,
 6 before making such the purchase or contract to purchase,
 7 determine that the ~~persons,--firm--or--corporation~~ person
 8 engaged, or about to engage, in the cutting of these forest
 9 products, has provided for the reduction or management of
 10 the fire hazard thus created, as provided in ~~sections-28-404~~
 11 ~~to-28-412;~~ this chapter. When the hazard reduction agreement
 12 provides that the purchaser of forest products shall
 13 withhold moneys to insure faithful compliance with ~~sections~~
 14 ~~28-404--to--28-412;~~ this chapter, ~~said the purchaser will~~
 15 shall transmit any all moneys which are withheld to the
 16 ~~{department}:~~ department on or before the fifteenth (15th)
 17 day of each month, clearly identifying by number or other
 18 appropriate means the hazard reduction agreement to which
 19 the withheld moneys pertain. The purchaser shall keep
 20 accurate records of the purchase and the amounts withheld,
 21 which may be inspected by the dpartment at any reasonable
 22 time."

23 ~~Violation--of--any--of--the--provisions--of--this--section~~
 24 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
 25 ~~not-less-than-one-hundred-dollars-(6100)-nor-more--than--one~~

1 ~~thousand-dollars-(61,000);~~

2 Section 5. Section 28-407, R.C.M. 1947, is amended to
 3 read as follows:

4 "28-407. Disposal of slash -- injunction against
 5 further cutting -- disposal at expense of owner -- lien and
 6 enforcement -- orders. (1) In-the-event-one-responsible
 7 therefor-shall-fail,-refuse-or-neglect If a person fails,
 8 refuses, or neglects to properly dispose of slash in
 9 accordance with the requirements of sections 28-404 and
 10 28-406, and ~~such-person-responsible-therefor~~ is engaged or
 11 is about to engage, either for himself or for another, in
 12 cutting timber or other forest products, and thereby
 13 creating creates a fire hazard ~~anywhere-within the--state,~~
 14 he may be enjoined from cutting such the timber ~~and--thereby~~
 15 creating a-fire-hazard until ~~he-shall--have--complied--with~~
 16 ~~the--provisions--of~~ sections 28-404 and 28-406; have been
 17 complied with. ~~Such-injunction-proceedings-may-be-instituted~~
 18 ~~by--the~~ The department ~~as--plaintiff~~ may initiate the
 19 proceedings, and the court may in its discretion grant a
 20 temporary injunction. ~~In-any-such-proceedings-no-bond--shall~~
 21 ~~be-required-of-the-plaintiff-and-such~~ The proceedings shall
 22 be ~~handled--with-expedition~~ conducted in the district court
 23 of the county where the land is located.

24 (2) If-one-responsible-therefor--has--for--any--reason
 25 failed If a person fails to comply with sections 28-404 and

1 28-406, and has ~~without--such--compliance~~ cut any forest
 2 products and ~~shall--fail--refuse--or--neglect--to--obtain~~
 3 ~~compliance-for-a-period-of~~ fails to comply within thirty
 4 (30) days after being notified ~~so~~ to do so by the
 5 department, the department ~~may~~ may ~~if--it--deems--it~~
 6 ~~advisable~~ complete, direct, or authorize the disposal of
 7 ~~such~~ the slash at the expense of the owner of the timber or
 8 other forest products cut or produced from the land upon
 9 which ~~such~~ the fire hazard remains undisposed of ~~as~~
 10 ~~aforsaid~~.

11 (3) The cost and expense of ~~such~~ the disposal, plus
 12 twenty per cent (20%) of the cost and expense of ~~such~~ the
 13 disposal as a penalty, ~~shall-constitute~~ constitutes a lien
 14 upon the forest products so cut or produced from ~~such~~ the
 15 land. If payment of the sum demanded ~~be is~~ not made to the
 16 department within ten (10) days of ~~such~~ its written demand,
 17 the department ~~must--transfer--all--papers--relative--to--the~~
 18 ~~unsatisfied-demand-for-payment-to-the--attorney--general--of~~
 19 ~~the--state--who~~ shall bring legal action on behalf of the
 20 state to recover the debt.

21 (4) The department shall not file for record any lien
 22 against the property of any person who has been issued a
 23 ~~certificante~~ certification of compliance with sections
 24 28-404 and 28-406, covering ~~such~~ the property."

25 ~~All--orders--and--directions--issued--by--the--department--as~~

1 ~~required-by-this-section-and--section--28-404--shall--be--in~~
 2 ~~writing--and--made--in--duplicate--the--original--of--which--shall~~
 3 ~~be--sent--or--delivered--to--the--person--to--receive--such--orders,~~
 4 ~~permits--or--directions,--one--copy--shall--be--filed--in--the--office~~
 5 ~~of--the--department.~~

6 Section 6. Section 28-408, R.C.M. 1947, is amended to
 7 read as follows:

8 "28-408. Supervision by department rules of board.
 9 (1) The department, under such rules as the board ~~of-natural~~
 10 ~~resources--and--conservation--may--provide,~~ adopts, shall may
 11 supervise and inspect the reduction or management of any
 12 fire hazard ~~to-the-property-of-others~~ created by the cutting
 13 of any forest product on private land in the state ~~of~~
 14 ~~Montana~~.

15 (2) The reduction or management of fire hazards
 16 referred to in this ~~act~~ chapter shall be in keeping with
 17 modern and progressive forest practices and more effective
 18 fire control and may include ~~or~~ but are not be limited to
 19 the taking of protective measures to prevent injury or the
 20 destruction of forest resources without actual abatement of
 21 the hazard."

22 Section 7. Section 28-410, R.C.M. 1947, is amended to
 23 read as follows:

24 "28-410. Contracts with owners of forest lands. The
 25 department ~~is--hereby--authorized--and--empowered--to~~ may, in

1 such form and containing such conditions as it prescribes,
 2 enter into agreements with the owners of any forest lands or
 3 any operator engaged in operations on lands within the state
 4 ~~of--Montana~~ whereby slash is created, ~~and--under--said~~
 5 contract the department may assume all responsibility for
 6 the reduction or management of any fire hazard ~~;~~ any--such
 7 ~~contract--shall~~ The department may provide in the agreement
 8 the amount to be paid by the owner or operator to the
 9 department by reason of its agreement to assume the
 10 reduction or management ~~;~~ of ~~such~~ the fire hazard ~~;~~ said
 11 but the amount ~~shall~~ may not exceed two five dollars ~~(\$2~~
 12 (\$5) for each one thousand (1000) feet log scale, or the
 13 equivalent thereof if forest products other than logs are
 14 cut."

15 Section 8. Section 28-412, R.C.M. 1947, is amended to
 16 read as follows:

17 "28-412. Certificate Certification of clearance. Any
 18 ~~owner-or-operator~~ A person who has entered into a contract
 19 with the department for the reduction or management of any a
 20 fire hazard ~~,~~ and upon payment of the contract price in
 21 accordance with the terms of ~~said~~ the contract and the full
 22 compliance with the terms of ~~said~~ the contract by ~~such-owner~~
 23 ~~or-operator;~~ the person, shall be granted a certificate
 24 certification, of clearance by the department and be
 25 relieved of any and all further liability and responsibility

1 for the removal or reduction of ~~any-such~~ the fire hazard;
 2 ~~provided,~~ however, the department may require that a cash
 3 bond, equivalent to the contract price, and conditioned upon
 4 the faithful performance of ~~said~~ the contract, be deposited
 5 by the ~~owner-or-operator~~ person with the department."

6 Section 9. There is a new R.C.M. section numbered
 7 28-413, that reads as follows:

8 28-413. Violations. A person convicted of violating
 9 this chapter is guilty of a misdemeanor and shall be fined
 10 not less than one hundred dollars (\$100) nor more than one
 11 thousand dollars (\$1000).

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 683

INTRODUCED BY BARDANOUE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE FIRE HAZARD REDUCTION LAWS BY CLARIFYING THOSE LAWS; REQUIRING PERSONS CLEARING RIGHT OF WAY TO NOTIFY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE CLEARING; PROVIDING FOR MONTHLY PAYMENTS OF ~~WITHHELD~~ WITHHELD MONIES TO REDUCE FIRE HAZARDS; INCREASING THE PERMISSIBLE MAXIMUM OF THE HAZARD REDUCTION PAYMENTS TO THE DEPARTMENT; AMENDING SECTIONS 28-404 THROUGH 28-408, 28-410, AND 28-412, R.C.M. 1947."

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1 ~~certificate-of-compliance-with-the-terms-of-this-section--to~~
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 15 unless exempted by the department. At least ten (10) days
 16 before commencement of the clearing, the person conducting
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 18 the clearing in the form and manner the department provides.

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 20 method of disposal is used, shall be done as rapidly as
 21 cutting or clearing progresses; ~~provided-that~~ however, upon
 22 application to the department ~~he~~ it may grant a permit
 23 extending the time within which ~~such the~~ burning must be
 24 done in compliance with ~~all-the-provisions-of~~ this chapter,
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 9 withholding until it is complete, a sufficient portion of
 10 the payment therefor to assure compliance with this ~~act~~
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12 ~~Violations--of--any--of--the-provisions-of-this-section~~
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 14 ~~not-less-than-one-hundred-dollars-(\$100)-nor-more--than--one~~
 15 ~~thousand-dollars-(\$1,000).~~

16 (4) In addition to the penalty ~~herein~~ provided in
 17 section 28-413, the offender may be enjoined, at the
 18 instance of the department, from proceeding with ~~such the~~
 19 work until the ~~provisions-of~~ this section shall--have has
 20 been complied with; and, upon application of the department
 21 to any court of competent jurisdiction, a writ of mandate
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 5 private lands within the ~~state-of-Montana,~~ state shall,
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 7 determine that the ~~persons,--firm--or--corporation~~ person
 8 engaged, or about to engage, in the cutting of these forest
 9 products, has provided for the reduction or management of
 10 the fire hazard thus created, as provided in ~~sections-28-404~~
 11 ~~to-28-412,~~ this chapter. When the hazard reduction agreement
 12 provides that the purchaser of forest products shall
 13 withhold moneys to insure faithful compliance with ~~sections~~
 14 ~~28-404-to-28-412,~~ this chapter, ~~said the~~ purchaser ~~will~~
 15 shall transmit any all moneys which are withheld to the
 16 ~~department,~~ department on or before the fifteenth (15th)
 17 day of each month, clearly identifying by number or other
 18 appropriate means the hazard reduction agreement to which
 19 the withheld WITHHELD moneys pertain. The purchaser shall
 20 keep accurate records of the purchase and the amounts
 21 witheld WITHHELD, which may be inspected by the department
 22 DEPARTMENT at any reasonable time."

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 7 therefor--shall--fail,--refuse-or-neglect If a person fails,
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 9 accordance with the requirements of sections 28-404 and
 10 28-406, and ~~such-person-responsible-therefor~~ is engaged or
 11 is about to engage, either for himself or for another, in
 12 cutting timber or other forest products, and thereby
 13 creating creates a fire hazard ~~anywhere-within the-state,~~
 14 he may be enjoined from cutting such the timber ~~and--thereby~~
 15 creating a--fire--hazard until he ~~shall-have-complied-with~~
 16 the-provisions-of sections 28-404 and 28-406. have been
 17 complied with. ~~Such-injunction-proceedings-may-be-instituted~~
 18 by--the The department ~~as--plaintiff~~ may initiate the
 19 proceedings, and the court may in its discretion grant a
 20 temporary injunction. ~~In-any-such-proceedings-no-bond-shall~~
 21 ~~be-required-of-the-plaintiff-and-such~~ The proceedings shall
 22 be handled-with-expedition conducted in the district court
 23 of the county where the land is located.

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 25 failed If a person fails to comply with sections 28-404 and

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 5 department, the department, may ~~if-it-seems-it-advisable,~~
 6 complete, direct, or authorize the disposal of ~~such~~ the
 7 slash at the expense of the owner of the timber or other
 8 forest products cut or produced from the land upon which
 9 ~~such~~ the fire hazard remains undisposed of ~~as-aforesaid.~~

10 (3) The cost and expense of ~~such~~ the disposal, plus
 11 twenty per cent (20%) of the cost and expense of ~~such~~ the
 12 disposal as a penalty, ~~shall-constitute~~ constitutes a lien
 13 upon the forest products so cut or produced from ~~such~~ the
 14 land. If payment of the sum demanded ~~be is~~ not made to the
 15 department within ten (10) days of ~~such~~ its written demand,
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 19 state to recover the debt.

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 21 against the property of any person who has been issued a
 22 ~~certificate~~ certification of compliance with sections
 23 28-404 and 28-406, covering ~~such~~ the property."

24 ~~All-orders-and-directions-issued-by-the--department--as~~
 25 ~~required--by--this--section--and--section-28-404-shall-be-in~~

1 ~~writing-and-made-in-duplicate,-the-original-of--which--shall~~
 2 ~~be--sent--or--delivered-to-the-person-to-receive-such-orders,~~
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5 Section 6. Section 28-408, R.C.M. 1947, is amended to
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 4 THE contract the department may assume all responsibility
 5 for the reduction or management of any fire hazard, ~~any~~
 6 ~~such contract shall~~ The department may provide in the
 7 agreement the amount to be paid by the owner or operator to
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 11 for each one thousand (1000) feet log scale, or the
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16 "28-412. Certificate Certification of clearance. ~~Any~~
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 18 with the department for the reduction or management of any
 19 fire hazard, ~~and~~ upon payment of the contract price in
 20 accordance with the terms of ~~said~~ the contract and the full
 21 compliance with the terms of ~~said~~ the contract by ~~such-owner~~
 22 ~~or-operator~~, the person, shall be granted a ~~certificate~~
 23 certification of clearance by the department and be
 24 relieved of any and all further liability and responsibility
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1 ~~provided~~, however, the department may require that a cash
 2 bond, equivalent to the contract price, and conditioned upon
 3 the faithful performance of ~~said~~ the contract, be deposited
 4 by the ~~owner-or-operator~~ person with the department."

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19 resources and conservation, provided for in Title 82A,
20 chapter 15.

21 (2) "Board" means the board of natural resources and
22 conservation, provided for in section 82A-1509.

23 (3) "Person" means an individual, association,
24 partnership, corporation, estate, or any other entity.

25 Section 2. Section 28-404, R.C.M. 1947, is amended to

1 read as follows:

2 "28-404. Reduction or management of fire hazard
3 created by cutting timber. ~~Everyone-engaged, or about to~~
4 ~~engage, in the~~ Before cutting of any forest product or
5 conducting standing timber stand improvement such as, but
6 not limited to, thinning, weeding, and or pruning, upon
7 private lands within the state of Montana the person
8 conducting such practice shall provide for the reduction or
9 management of the fire hazard ~~to the property of others~~
10 ~~thus-created or~~ to be created by entering into a fire hazard
11 reduction agreement with the department as--provided--in
12 ~~sections-28-408-to-28-412, or and~~ by posting a bond to the
13 state ~~of--Montana~~ in such form and for such amount as may
14 be prescribed by the department, ~~of-natural-resources--and~~
15 ~~conservation, provided, however, that the amount of the bond~~
16 ~~so--prescribed--shall--not--be--in--excess--of--the--amount--which~~
17 ~~such-person-would-be-required-to--pay--under--said--sections~~
18 ~~28-408--to--28-412,--and--that--the--bond--shall--be~~ conditioned
19 upon full and faithful compliance with all requirements
20 under ~~said--sections-28-408-to-28-412, this chapter~~ and the
21 faithful reduction or management of such the fire hazards
22 hazard in the manner prescribed by law, and by rules
23 adopted by the board. Such The bond shall be released upon
24 completion of the work done in compliance with the terms of
25 the bond agreement." ~~The---department--shall--issue--a~~

1 ~~certificate-of-compliance-with-the-terms-of-this-section--to~~
 2 ~~all-persons-who-have-complied-therewith.~~

3 Section 3. Section 28-405, R.C.M. 1947, is amended to
 4 read as follows:

5 "28-405. Reduction of slash and forest debris along
 6 right of way. ~~Everyone~~ (1) A person clearing right of way
 7 for any railroad, public highway, public trail, private
 8 road, trail, ditch, dyke, pipeline or wire lines, or any
 9 other transmission or transportation utility right of way,
 10 except temporary roads located within the boundaries of the
 11 cutting area and which are used in the actual logging
 12 operations, shall ~~reduce~~ dispose of the hazard resulting
 13 from ~~such the~~ clearing or from the cutting of material for
 14 the construction of ~~such the~~ public or private utility
 15 unless exempted by the department. At least ten (10) days
 16 before commencement of the clearing, the person conducting
 17 the clearing shall notify the department of commencement of
 18 the clearing in the form and manner the department provides.

19 (2) Hazard reduction, including burning where this
 20 method of disposal is used, shall be done as rapidly as
 21 cutting or clearing progresses; ~~provided-that~~ however, upon
 22 application to the department ~~he~~ it may grant a permit
 23 extending the time within which ~~such the~~ burning must be
 24 done in compliance with ~~all-the-provisions-of~~ this chapter,
 25 and chapter 1 of this title relating to burning permits

1 during the closed season.

2 (3) ~~The-provisions-of-the~~ This section ~~shall-apply~~
 3 applies to all clearing of rights of way across private
 4 land and on behalf of the state, county, highway districts,
 5 and road districts, whether the work ~~be is~~ done by day
 6 labor, or by contract, and unless unavoidable emergency
 7 prevents, provision shall be made by the proper officials
 8 conducting, directing, or letting ~~said the~~ work for
 9 withholding until it is complete, a sufficient portion of
 10 the payment therefor to assure compliance with this ~~act~~
 11 chapter.

12 ~~Violations--of--any--of--the-provisions-of-this-section~~
 13 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
 14 ~~not-less-than-one-hundred-dollars-(\$100)-nor-more--than--one~~
 15 ~~thousand-dollars-(\$1,000).~~

16 (4) In addition to the penalty ~~herein~~ provided in
 17 section 28-413, the offender may be enjoined, at the
 18 instance of the department, from proceeding with ~~such the~~
 19 work until the ~~provisions-of~~ this section ~~shall-have~~ has
 20 been complied with; and, upon application of the department
 21 to any court of competent jurisdiction, a writ of mandate
 22 shall issue compelling the offender to fully comply with ~~the~~
 23 provisions-thereof; this section."

24 Section 4. Section 28-406, R.C.M. 1947, is amended to
 25 read as follows:

1 "28-406. Purchaser will insure compliance, prior to
 2 purchase, will transmit withheld money to
 3 department, ~~penalty~~. The initial purchaser of forest
 4 products which have been cut or are about to be cut from any
 5 private lands within the ~~state--of-Montana~~, state shall,
 6 before making such the purchase or contract to purchase,
 7 determine that the ~~persons,--firm--or--corporation~~ person
 8 engaged, or about to engage, in the cutting of these forest
 9 products, has provided for the reduction or management of
 10 the fire hazard thus created, as provided in ~~sections-28-404~~
 11 ~~to-28-412~~, this chapter. When the hazard reduction agreement
 12 provides that the purchaser of forest products shall
 13 withhold moneys to insure faithful compliance with ~~sections~~
 14 ~~28-404-to-28-412~~, this chapter, said the purchaser will
 15 shall transmit any all moneys which are withheld to the
 16 ~~department~~, department on or before the fifteenth (15th)
 17 day of each month, clearly identifying by number or other
 18 appropriate means the hazard reduction agreement to which
 19 the withheld WITHHELD moneys pertain. The purchaser shall
 20 keep accurate records of the purchase and the amounts
 21 withheld WITHHELD, which may be inspected by the department
 22 DEPARTMENT at any reasonable time."

23 ~~Violation-of-any-of-the-provisions-of-this-section~~
 24 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
 25 ~~not-less-than-one-hundred-dollars-(\$100)-nor-more-than-one~~

1 ~~thousand-dollars-(\$1,000).~~

2 Section 5. Section 28-407, R.C.M. 1947, is amended to
 3 read as follows:

4 "28-407. Disposal of slash -- injunction against
 5 further cutting -- disposal at expense of owner -- lien and
 6 enforcement -- orders. (1) In--the-event--one--responsible
 7 therefor--shall--fail,--refuse-or-neglect If a person fails,
 8 refuses, or neglects to properly dispose of slash in
 9 accordance with the requirements of sections 28-404 and
 10 28-406, and ~~such-person-responsible-therefor~~ is engaged or
 11 is about to engage, either for himself or for another, in
 12 cutting timber or other forest products, and thereby
 13 ~~creating~~ creates a fire hazard ~~anywhere-within the-state,~~
 14 he may be enjoined from cutting such the timber and--thereby
 15 ~~creating a--fire--hazard~~ until ~~he-shall-have-complied-with~~
 16 ~~the-provisions-of~~ sections 28-404 and 28-406, have been
 17 complied with. Such-injunction-proceedings-may-be-instituted
 18 ~~by--the~~ The department ~~as--plaintiff~~ may initiate the
 19 proceedings, and the court may in its discretion grant a
 20 temporary injunction. ~~in-any-such-proceedings-no-bond-shall~~
 21 ~~be-required-of-the-plaintiff-and-such~~ The proceedings shall
 22 ~~be-handled-with-expedition~~ conducted in the district court
 23 of the county where the land is located.

24 (2) If--one--responsible--therefor--has-for-any-reason
 25 failed If a person fails to comply with sections 28-404 and

1 28-406, and has ~~without--such--compliance~~ cut any forest
 2 products and ~~shall--failly--refuse,--or--neglect--to--obtain~~
 3 ~~compliance--for--a-period-of~~ fails to comply within thirty
 4 (30) days after being notified ~~se~~ to do so by the
 5 department, the department, may ~~,if-it-deems-it-advisable,~~
 6 complete, direct, or authorize the disposal of such the
 7 slash at the expense of the owner of the timber or other
 8 forest products cut or produced from the land upon which
 9 such the fire hazard remains, undisposed of ~~as-aforsaid.~~

10 (3) The cost and expense of such the disposal, plus
 11 twenty per cent (20%) of the cost and expense of such the
 12 disposal as a penalty, ~~shall-constitute~~ constitutes a lien
 13 upon the forest products so cut or produced from such the
 14 land. If payment of the sum demanded be is not made to the
 15 department within ten (10) days of such its written demand,
 16 the department ~~must-transfer--all--papers--relative--to--the~~
 17 ~~unsatisfied--demand--for--payment--to--the--attorney--general--of~~
 18 ~~the-state,who~~ shall bring legal action on behalf of the
 19 state to recover the debt.

20 (4) The department shall not file for record any lien
 21 against the property of any person who has been issued a
 22 certificate certification of compliance with sections
 23 28-404 and 28-406, covering such the property."

24 ~~All-orders-and-directions-issued-by-the--department--as~~
 25 ~~required--by--this--section--and--section-28-404-shall-be-in~~

1 ~~writing-and-made-in-duplicate,--the-original-of--which--shall~~
 2 ~~be--sent--or--delivered--to--the-person--to--receive--such--orders,~~
 3 ~~permits--or--directions,--one-copy-shall-be-filed-in-the-office~~
 4 ~~of-the-department.~~

5 Section 6. Section 28-408, R.C.M. 1947, is amended to
 6 read as follows:

7 "28-408. Supervision by department -- rules of board.
 8 (1) The department, under such rules as the board ~~of-natural~~
 9 ~~resources-and-conservation-may-provide,~~ adopts, shall may
 10 supervise and inspect the reduction or management of any
 11 fire hazard ~~to-the-property-of-others~~ created by the cutting
 12 of any forest product on private land in the state ~~of~~
 13 Montana.

14 (2) The reduction or management of fire hazards
 15 referred to in this ~~act~~ chapter shall be in keeping with
 16 modern and progressive forest practices and more effective
 17 fire control and may include ~~or~~ but are not be limited to
 18 the taking of protective measures to prevent injury or the
 19 destruction of forest resources without actual abatement of
 20 the hazard."

21 Section 7. Section 28-410, R.C.M. 1947, is amended to
 22 read as follows:

23 "28-410. Contracts with owners of forest lands. The
 24 department ~~is--hereby--authorized-and-empowered-to~~ may, in
 25 such form and containing such conditions as it prescribes,

1 enter into agreements with the owners of any forest lands or
 2 any operator engaged in operations on lands within the state
 3 ~~of Montana~~ whereby slash is created, ~~and under said~~ UNDER
 4 THE contract the department may assume all responsibility
 5 for the reduction or management of any fire hazard, ~~any~~
 6 ~~such contract shall~~ The department may provide in the
 7 agreement the amount to be paid by the owner or operator to
 8 the department by reason of its agreement to assume the
 9 reduction or management of ~~such~~ the fire hazard, ~~said~~ but
 10 the amount shall may not exceed ~~two five~~ dollars ~~(62)~~ (\$5)
 11 for each one thousand (1000) feet log scale, or the
 12 equivalent thereof if forest products other than logs are
 13 cut."

14 Section 8. Section 28-412, R.C.M. 1947, is amended to
 15 read as follows:

16 "28-412. Certificate Certification of clearance. Any
 17 ~~owner or operator~~ A person who has entered into a contract
 18 with the department for the reduction or management of any
 19 fire hazard, and upon payment of the contract price in
 20 accordance with the terms of ~~said the~~ contract and the full
 21 compliance with the terms of ~~said the~~ contract by ~~such owner~~
 22 ~~or operator, the person,~~ shall be granted a ~~certificate~~
 23 ~~certification~~ of clearance by the department and be
 24 relieved of any and all further liability and responsibility
 25 for the removal or reduction of ~~any such~~ the fire hazard;

1 ~~provided,~~ however, the department may require that a cash
 2 bond, equivalent to the contract price, and conditioned upon
 3 the faithful performance of ~~said the~~ contract, be deposited
 4 by the ~~owner or operator~~ person with the department."

5 Section 9. There is a new R.C.M. section numbered
 6 28-413, that reads as follows:

7 28-413. Violations. A person convicted of violating
 8 this chapter is guilty of a misdemeanor and shall be fined
 9 not less than one hundred dollars (\$100) nor more than one
 10 thousand dollars (\$1000).

-End-

March 27, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 683

That House Bill No. 683, third reading, be amended as follows:

1. Amend page 3, section 3, line 12.
Following: "reduce"
Strike: "dispose of"
Insert: "reduce"

2. Amend page 5, section 4, line 22.
Following: "time."
Insert: "Upon the department making the determination that faithful compliance with this chapter has been achieved, the department shall return to the owner thereof all such withheld monies."

HOUSE BILL NO. 683

INTRODUCED BY BARDANOUE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE FIRE HAZARD REDUCTION LAWS BY CLARIFYING THOSE LAWS; REQUIRING PERSONS CLEARING RIGHT OF WAY TO NOTIFY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE CLEARING; PROVIDING FOR MONTHLY PAYMENTS OF ~~WITHHELD~~ WITHHELD MONIES TO REDUCE FIRE HAZARDS; INCREASING THE PERMISSIBLE MAXIMUM OF THE HAZARD REDUCTION PAYMENTS TO THE DEPARTMENT; AMENDING SECTIONS 28-404 THROUGH 28-408, 28-410, AND 28-412, R.C.M. 1947."

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

Section 1. There is a new R.C.M. section numbered 28-403.1, R.C.M. 1947, that reads as follows:

28-403.1. Definitions. As used in this chapter: (1) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

Section 2. Section 28-404, R.C.M. 1947, is amended to

read as follows:

"28-404. Reduction or management of fire hazard created by cutting timber. ~~Everyone--engaged--or--about--to engage--in--the~~ Before cutting of any forest product or conducting standing timber stand improvement such as, but not limited to, thinning, weeding, and or pruning, upon private lands within the state of Montana the person conducting such practice shall provide for the reduction or management of the fire hazard ~~to the--property--of--others thus-created-or~~ to be created by entering into a fire hazard reduction agreement with the department as provided in sections-28-408-to-28-412, or and by posting a bond to the state of Montana in such form and for such amount as may be prescribed by the department, ~~of-natural-resources-and conservation;-provided;-however;-that-the-amount-of-the-bond so-prescribed-shall-not-be-in-excess--of--the--amount--which such--person--would--be--required-to-pay-under-said-sections 28-408-to-28-412,-and-that-the--bond--shall--be~~ conditioned upon full and faithful compliance with all requirements under said-sections-28-408-to-28-412, this chapter and the faithful reduction or management of such the fire hazards hazard in the manner prescribed by law, and by rules adopted by the board. Such The bond shall be released upon completion of the work done in compliance with the terms of the bond agreement." ~~The---department---shall---issue---~~

4/16/75

1 ~~certificate--of-compliance-with-the-terms-of-this-section-to~~
 2 ~~all-persons-who-have-complied-therewith.~~

3 Section 3. Section 28-405, R.C.M. 1947, is amended to
 4 read as follows:

5 "28-405. Reduction of slash and forest debris along
 6 right of way. ~~Everyone~~ (1) A person clearing right of way
 7 for any railroad, public highway, public trail, private
 8 road, trail, ditch, dyke, pipeline or wire lines, or any
 9 other transmission or transportation utility right of way,
 10 except temporary roads located within the boundaries of the
 11 cutting area and which are used in the actual logging
 12 operations, shall ~~reduce~~ ~~dispose--of~~ REDUCE the hazard
 13 resulting from ~~such~~ the clearing or from the cutting of
 14 material for the construction of ~~such~~ the public or private
 15 utility unless exempted by the department. At least ten
 16 (10) days before commencement of the clearing, the person
 17 conducting the clearing shall notify the department of
 18 commencement of the clearing in the form and manner the
 19 department provides.

20 (2) Hazard reduction, including burning where this
 21 method of disposal is used, shall be done as rapidly as
 22 cutting or clearing progresses; ~~provided-that~~ however, upon
 23 application to the department he it may grant a permit
 24 extending the time within which ~~such~~ the burning must be
 25 done in compliance with ~~all-the-provisions-of~~ this chapter,

1 and chapter 1 of this title relating to burning permits
 2 during the closed season.

3 (3) ~~The--provisions--of--the~~ This section shall apply
 4 applies to all clearing of rights of way across private
 5 land and on behalf of the state, county, highway districts,
 6 and road districts, whether the work be is done by day
 7 labor, or by contract, and unless unavoidable emergency
 8 prevents, provision shall be made by the proper officials
 9 conducting, directing, or letting ~~said~~ the work for
 10 withholding until it is complete, a sufficient portion of
 11 the payment therefor to assure compliance with this ~~act~~
 12 chapter.

13 ~~Violations-of-any-of-the--provisions--of--this--section~~
 14 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
 15 ~~not--less--than-one-hundred-dollars-(\$100)-nor-more-than-one~~
 16 ~~thousand-dollars-(\$1,000).~~

17 (4) In addition to the penalty ~~herein~~ provided in
 18 section 28-413, the offender may be enjoined, at the
 19 instance of the department, from proceeding with ~~such~~ the
 20 work until ~~the--provisions-of~~ this section shall have has
 21 been complied with; and, upon application of the department
 22 to any court of competent jurisdiction, a writ of mandate
 23 shall issue compelling the offender to fully comply with the
 24 provisions thereof, this section."

25 Section 4. Section 28-406, R.C.M. 1947, is amended to

1 read as follows:

2 "28-406. Purchaser will insure compliance, prior to
3 purchase, will transmit withheld money to
4 department. ~~penalty.~~ The initial purchaser of forest
5 products which have been cut or are about to be cut from any
6 private lands within the ~~state--of-Montana;~~ state shall,
7 before making such the purchase or contract to purchase,
8 determine that the ~~persons;~~ ~~firm--or--corporation~~ person
9 engaged, or about to engage, in the cutting of these forest
10 products, has provided for the reduction or management of
11 the fire hazard thus created, as provided in ~~sections-28-404~~
12 ~~to-28-412;~~ this chapter. When the hazard reduction agreement
13 provides that the purchaser of forest products shall
14 withhold moneys to insure faithful compliance with ~~sections~~
15 ~~28-404-to-28-412;~~ this chapter, ~~said the~~ purchaser will
16 shall transmit any all moneys which are withheld to the
17 ~~department;~~ department on or before the fifteenth (15th)
18 day of each month, clearly identifying by number or other
19 appropriate means the hazard reduction agreement to which
20 the withheld WITHHELD moneys pertain. The purchaser shall
21 keep accurate records of the purchase and the amounts
22 withheld WITHHELD, which may be inspected by the ~~department~~
23 DEPARTMENT at any reasonable time. ~~UPON--THE--DEPARTMENT~~
24 ~~MAKING--THE-DETERMINATION-THAT-FAITHFUL-COMPLIANCE-WITH-THIS~~
25 ~~CHAPTER-HAS-BEEN-ACHIEVED, THE-DEPARTMENT--SHALL--RETURN--TO~~

1 ~~THE--OWNER--THEREOF--ALL--SUCH--WITHHELD--MONIES;~~ UPON THE
2 DEPARTMENT MAKING THE DETERMINATION THAT FAITHFUL COMPLIANCE
3 WITH THIS CHAPTER HAS BEEN ACHIEVED, THE DEPARTMENT SHALL
4 RETURN TO THE OWNER THEREOF ALL SUCH WITHHELD MONIES WITH
5 THE EXCEPTION OF TWO PERCENT (2%) FOR INSPECTION FEES."

6 ~~Violation-of-any-of--the--provisions--of--this--section~~
7 ~~shall-be-deemed-a-misdemeanor-and-be-punishable-by-a-fine-of~~
8 ~~not--less--than-one-hundred-dollars-(\$100)-nor-more-than-one~~
9 ~~thousand-dollars-(\$1,000);~~

10 Section 5. Section 28-407, R.C.M. 1947, is amended to
11 read as follows:

12 "28-407. Disposal of slash -- injunction against
13 further cutting -- disposal at expense of owner -- lien and
14 enforcement -- orders. (1) ~~in-the-event-one-responsible~~
15 ~~therefor-shall-fail-refuse-or-neglect~~ If a person fails,
16 refuses, or neglects to properly dispose of slash in
17 accordance with the requirements of sections 28-404 and
18 28-406, and ~~such-person-responsible-therefor~~ is engaged or
19 is about to engage, either for himself or for another, in
20 cutting timber or other forest products, and thereby
21 ~~creating creates~~ a fire hazard ~~anywhere-within the--state,~~
22 he may be enjoined from cutting such the timber ~~and-thereby~~
23 ~~creating a-fire-hazard~~ until he ~~shall--have--complied--with~~
24 ~~the--provisions--of~~ sections 28-404 and 28-406; have been
25 complied with. ~~Such-injunction-proceedings-may-be-instituted~~

1 ~~by--the~~ The department ~~as--plaintiff~~ may initiate the
 2 proceedings, and the court may in its discretion grant a
 3 temporary injunction. ~~in-any-such-proceedings-no-bond--shall~~
 4 ~~be-required-of-the-plaintiff-and-such~~ The proceedings shall
 5 be ~~handled--with-expedition~~ conducted in the district court
 6 of the county where the land is located.

7 ~~(2) If-one-responsible-therefor--has--for--any--reason~~
 8 ~~failed~~ If a person fails to comply with sections 28-404 and
 9 28-406, and has ~~without--such--compliance~~ cut any forest
 10 products and ~~shall--fail--refuse--or--neglect--to-obtain~~
 11 ~~compliance-for-a-period-of~~ fails to comply within thirty
 12 (30) days after being notified ~~so~~ to do so by the
 13 department, the department, ~~may~~ if-it-deems-it-advisable,
 14 complete, direct, or authorize the disposal of ~~such~~ the
 15 slash at the expense of the owner of the timber or other
 16 forest products cut or produced from the land upon which
 17 ~~such~~ the fire hazard remains undisposed of ~~as-aforsaid.~~

18 ~~(3)~~ The cost and expense of ~~such~~ the disposal, plus
 19 twenty per cent (20%) of the cost and expense of ~~such~~ the
 20 disposal as a penalty, ~~shall-constitute~~ constitutes a lien
 21 upon the forest products so cut or produced from ~~such~~ the
 22 land. If payment of the sum demanded ~~be is~~ not made to the
 23 department within ten (10) days of ~~such~~ its written demand,
 24 the department ~~must--transfer--all--papers--relative--to--the~~
 25 ~~unsatisfied-demand-for-payment-to-the--attorney--general--of~~

1 ~~the--state--who~~ shall bring legal action on behalf of the
 2 state to recover the debt.

3 ~~(4)~~ The department shall not file for record any lien
 4 against the property of any person who has been issued a
 5 ~~certificate~~ certification of compliance with sections
 6 28-404 and 28-406, covering ~~such~~ the property."

7 ~~All--orders--and-directions-issued-by-the-department-as~~
 8 ~~required-by-this-section-and--section--28-404--shall--be--in~~
 9 ~~writing--and--made-in-duplicate--the-original-of-which-shall~~
 10 ~~be-sent-or-delivered-to-the-person-to-receive--such--orders;~~
 11 ~~permits-or-directions--one-copy-shall-be-filed-in-the-office~~
 12 ~~of-the-department;~~

13 Section 6. Section 28-408, R.C.M. 1947, is amended to
 14 read as follows:

15 "28-408. Supervision by department ~~--~~ rules of board.
 16 (1) The department, under such rules as the board ~~of-natural~~
 17 ~~resources--and--conservation--may-provide,~~ adopts, shall ~~may~~
 18 supervise and inspect the reduction or management of any
 19 fire hazard ~~to-the-property-of-others~~ created by the cutting
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 24 modern and progressive forest practices and more effective
 25 fire control and may include ~~or~~ but are not be limited to

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2 destruction of forest resources without actual abatement of
3 the hazard."

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5 read as follows:

6 "28-410. Contracts with owners of forest lands. The
7 department ~~is hereby authorized and empowered to~~ may, in
8 such form and containing such conditions as it prescribes,
9 enter into agreements with the owners of any forest lands or
10 any operator engaged in operations on lands within the state
11 ~~of Montana~~ whereby slash is created, ~~and under said~~ UNDER
12 THE contract the department may assume all responsibility
13 for the reduction or management of any fire hazard, ~~any~~
14 ~~such contract shall~~ The department may provide in the
15 agreement the amount to be paid by the owner or operator to
16 the department by reason of its agreement to assume the
17 reduction or management, of such the fire hazard, ~~said but~~
18 the amount ~~shall may~~ not exceed ~~two five~~ five dollars ~~(\$2) (\$5)~~
19 for each one thousand (1000) feet log scale, or the
20 equivalent thereof if forest products other than logs are
21 cut."

22 Section 8. Section 28-412, R.C.M. 1947, is amended to
23 read as follows:

24 "28-412. Certificate Certification of clearance. Any
25 ~~owner or operator~~ A person who has entered into a contract

1 with the department for the reduction or management of any
2 fire hazard, ~~and~~ upon payment of the contract price in
3 accordance with the terms of ~~said the~~ the contract and the full
4 compliance with the terms of ~~said the~~ the contract by ~~such owner~~
5 ~~or operator,~~ the person, shall be granted a ~~certificate~~
6 certification of clearance by the department and be
7 relieved of any and all further liability and responsibility
8 for the removal or reduction of ~~any such the~~ the fire hazard;
9 ~~provided,~~ however, the department may require that a cash
10 bond, equivalent to the contract price, and conditioned upon
11 the faithful performance of ~~said the~~ the contract, be deposited
12 by the ~~owner or operator~~ person with the department."

13 Section 9. There is a new R.C.M. section numbered
14 28-413, that reads as follows:

15 28-413. Violations. A person convicted of violating
16 this chapter is guilty of a misdemeanor and shall be fined
17 not less than one hundred dollars (\$100) nor more than one
18 thousand dollars (\$1000).

-End-