

CHAPTER NO. 670

HOUSE BILL NO. 759

INTRODUCED BY BERTELSEN, BENNETT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

IN THE HOUSE

February 12, 1979	Introduced and referred to Committee on Natural Resources.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 15, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 17, 1979	Motion pass consideration.
March 19, 1979	Second reading, concurred in.
March 21, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 22, 1979	Returned from second house. Concurred in as amended.
March 23, 1979	On motion consideration passed until the 71st Legislative Day.

March 30, 1979

Third reading, amendments
rejected.

On motion Joint Conference
Committee requested.

March 31, 1979

Joint Conference Committee
appointed.

April 10, 1979

Joint Conference
Committee dissolved.

On motion Free Joint Conference
Committee requested.

April 11, 1979

Free Joint Conference
Committee appointed.

April 12, 1979

Free Joint Conference
Committee reported.

April 13, 1979

Second reading, adopted.

April 16, 1979

Third reading, adopted.

April 17, 1979

Second house, adopted.

April 18, 1979

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *759*
 2 INTRODUCED BY *Richard Bennett*
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 6 THE LAWS RELATED TO FOREST FIRE HAZARD REDUCTION; TO
 7 INCREASE HAZARD REDUCTION WITHHOLDING RATES AND MAKE THEM
 8 MORE ENFORCEABLE; AND AMENDING SECTIONS 76-13-404,
 9 76-13-407, 76-13-409, AND 76-13-410, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 76-13-404, MCA, is amended to read:
 13 "76-13-404. Contracts with owners of forest lands. The
 14 department may, in such form and containing such conditions
 15 as it prescribes, enter into agreements with the owners of
 16 any forest lands or any operator engaged in operations on
 17 lands within the state whereby slash is created. Under the
 18 contract the department may assume all responsibility for
 19 the reduction or management of any fire hazard. The
 20 department may provide in the agreement the amount to be
 21 paid by the owner or operator to the department by reason of
 22 its agreement to assume the reduction or management of the
 23 fire hazard, but the amount may not exceed \$5 ~~11,500~~ for each
 24 1,000 feet log scale or the equivalent thereof if forest
 25 products other than logs are cut."

1 Section 2. Section 76-13-407, MCA, is amended to read:
 2 "76-13-407. Reduction of slash and debris along
 3 right-of-way. (1) A person clearing right-of-way for any
 4 railroad, public highway, public trail, private road, trail,
 5 ditch, dike, pipeline or wire lines, or any other
 6 transmission or transportation utility right-of-way, except
 7 temporary roads located within the boundaries of the cutting
 8 area and which are used in the actual logging operations,
 9 shall reduce the hazard resulting from the clearing or from
 10 the cutting of material for the construction of the public
 11 or private utility unless exempted by the department. At
 12 least 10 days before commencement of the clearing, the
 13 person conducting the clearing shall notify the department
 14 of commencement of the clearing in the form and manner the
 15 department provides.

16 (2) Hazard reduction, including burning where this
 17 method of disposal is used, shall be done as rapidly as
 18 cutting or clearing progresses; however, upon application to
 19 the department, it may grant a permit extending the time
 20 within which the burning must be done in compliance with
 21 this chapter relating to burning permits during the closed
 22 season.

23 (3) This section applies to all clearing of
 24 rights-of-way across private land and on behalf of the
 25 state, county, highway districts, and road districts,

1 whether the work is done by day labor or by contract, and
 2 unless unavoidable emergency prevents, provision shall be
 3 made by the proper officials conducting, directing, or
 4 letting the work for withholding until it is complete a
 5 sufficient portion of the payment therefor to assure
 6 compliance with this part.

7 ~~{4}--In-addition-to-the-penalty-provided-in-76-13-412,~~
 8 ~~the-offender-may-be-enjoined-at-the-instance-of-the~~
 9 ~~department-from-proceeding-with-the-work-until-this-section~~
 10 ~~has-been-complied-with-Upon-application-of-the-department~~
 11 ~~to-any-court-of-competent-jurisdiction-a-writ-of-mandate~~
 12 ~~shall-issue-compelling-the-offender-to-fully-comply-with~~
 13 ~~this-section"~~

14 Section 3. Section 76-13-409, MCA, is amended to read:
 15 "76-13-409. Duty of purchaser to insure compliance.

16 (1) The initial purchaser of forest products which have been
 17 cut or are about to be cut from any private lands within the
 18 state shall, before making the purchase or contract to
 19 purchase, determine that the person engaged or about to
 20 engage in the cutting of these forest products has provided
 21 for the reduction or management of the fire hazard thus
 22 created, as provided in this part.

23 (2) When the hazard reduction agreement provides that
 24 the purchaser of forest products shall withhold moneys to
 25 insure faithful compliance with this part, the purchaser

1 shall transmit all moneys which are withheld to the
 2 department on or before the 15th day of each month, clearly
 3 identifying by number ~~or-other-appropriate-means~~ the hazard
 4 reduction agreement to which the withheld moneys pertain.
 5 The purchaser shall keep accurate records of the purchase
 6 and the amounts withheld, which may be inspected by the
 7 department at any reasonable time.

8 (3) Upon the department making the determination that
 9 faithful compliance with this part has been achieved, the
 10 department shall return to the owner thereof all such
 11 withheld money with the exception of 2% ~~10%~~ for inspection,
 12 ~~fee administration, enforcement, and smoke management."~~

13 Section 4. Section 76-13-410, MCA, is amended to read:

14 "76-13-410. Failure to comply. (1) If a person fails,
 15 refuses, or neglects to properly dispose of slash in
 16 accordance with the requirements of ~~76-13-407 and~~ 76-13-408
 17 ~~and-76-13-409~~ and is engaged or is about to engage, either
 18 for himself or for another, in cutting timber or other
 19 forest products and thereby creates a fire hazard, he may be
 20 enjoined from ~~cutting--the~~ further timber harvesting
 21 operations until ~~76-13-407 and~~ 76-13-408 ~~and-76-13-409~~ have
 22 been complied with. The department may initiate the
 23 proceedings, and ~~the court may in its discretion grant~~
 24 obtain a temporary restraining order, injunction, or writ of
 25 mandate. The proceedings shall be conducted in the district

1 court of the county where the land is located.

2 (2) If a person fails to comply with ~~76-13-407~~ or
3 76-13-408 ~~and 76-13-409~~ and has cut any forest products and
4 fails to comply within 30 days after being notified to do
5 so by the department, the department may complete, direct,
6 or authorize the disposal of the slash at the expense of the
7 owner of the timber or other forest products cut or produced
8 from the land upon which the undisposed of fire hazard
9 remains.

10 (3) The cost and expense of the disposal, plus 20% of
11 the cost and expense of the disposal as a penalty,
12 constitutes a lien upon the forest products so cut or
13 produced from the land. If payment of the sum demanded is
14 not made to the department within 10 days of its written
15 demand, the department shall bring legal action on behalf of
16 the state to recover the debt."

17 NEW SECTION. Section 5. Failure to submit withholding
18 -- remedy. (1) If a purchaser does not submit withheld money
19 on or before the 15th day of each month when required to do
20 so under 76-13-407, he must be notified by registered or
21 certified mail that he is in noncompliance and be given 15
22 days to submit all money then due. If he fails to submit all
23 money due within the required time, the department may
24 initiate proceedings to enjoin further processing of all
25 wood products until all money due is paid in full or

1 satisfactory arrangements for payments are made.

2 (2) If payment is not made within the 15-day period
3 after notification as provided in subsection (1), a penalty
4 of 5% of the amount due must be assessed. The department may
5 abate the penalty if the purchaser establishes that the
6 failure to submit the amount due as required was due to
7 reasonable cause and was not due to neglect on his part. The
8 department, in addition to the penalty, may impose interest
9 at the rate of 10% a year on any balance remaining unpaid.

-End-

HB 259

HOUSE BILL NO. 759

INTRODUCED BY BERTELSEN, BENNETT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE LAWS RELATED TO FOREST FIRE HAZARD REDUCTION; TO INCREASE HAZARD REDUCTION WITHHOLDING RATES AND MAKE THEM MORE ENFORCEABLE; AND AMENDING SECTIONS 76-13-404, 76-13-407, 76-13-409, AND 76-13-410, MCA."

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

Section 1. Section 76-13-404, MCA, is amended to read:

"76-13-404. Contracts with owners of forest lands. The department may, in such form and containing such conditions as it prescribes, enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. Under the contract the department may assume all responsibility for the reduction or management of any fire hazard. The department may provide in the agreement the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of the fire hazard, but the amount may not exceed \$5 ~~11.50~~ for each 1,000 feet log scale or the equivalent thereof if forest products other than logs are cut."

Section 2. Section 76-13-407, MCA, is amended to read:

"76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department, it may grant a permit extending the time within which the burning must be done in compliance with this chapter relating to burning permits during the closed season.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts.

1 whether the work is done by day labor or by contract, and
 2 unless unavoidable emergency prevents, provision shall be
 3 made by the proper officials conducting, directing, or
 4 letting the work for withholding until it is complete a
 5 sufficient portion of the payment therefor to assure
 6 compliance with this part.

7 ~~{4}--in-addition-to-the-penalty-provided-in--76-13-412v~~
 8 ~~the--offender--may--be--enjoined--at--the--instance--of--the~~
 9 ~~department--from--proceeding--with--the--work--until--this--section~~
 10 ~~has--been--complied--with--Upon-application-of-the-department~~
 11 ~~to-any-court-of-competent-jurisdiction,-a-writ-of-mandate~~
 12 ~~shall--issue--compelling--the--offender-to-fully-comply-with~~
 13 ~~this-section."~~

14 Section 3. Section 76-13-409, MCA, is amended to read:
 15 "76-13-409. Duty of purchaser to insure compliance.
 16 (1) The initial purchaser of forest products which have been
 17 cut or are about to be cut from any private lands within the
 18 state shall, before making the purchase or contract to
 19 purchase, determine that the person engaged or about to
 20 engage in the cutting of these forest products has provided
 21 for the reduction or management of the fire hazard thus
 22 created, as provided in this part.

23 (2) When the hazard reduction agreement provides that
 24 the purchaser of forest products shall withhold moneys to
 25 insure faithful compliance with this part, the purchaser

1 shall transmit all moneys which are withheld to the
 2 department on or before the 15th day of each month, clearly
 3 identifying by number ~~or-other-appropriate-means~~ the hazard
 4 reduction agreement to which the withheld moneys pertain.
 5 The purchaser shall keep accurate records of the purchase
 6 and the amounts withheld, which may be inspected by the
 7 department at any reasonable time.

8 (3) Upon the department making the determination that
 9 faithful compliance with this part has been achieved, the
 10 department shall return to the owner thereof all such
 11 withheld money with the exception of 2% ~~10%~~ for inspection,
 12 ~~fees administration, enforcement, and smoke management."~~

13 Section 4. Section 76-13-410, MCA, is amended to read:
 14 "76-13-410. Failure to comply. (1) If a person fails,
 15 refuses, or neglects to properly dispose of slash in
 16 accordance with the requirements of ~~76-13-407 and~~ 76-13-408
 17 ~~and--76-13-409~~ and is engaged or is about to engage, either
 18 for himself or for another, in cutting timber or other
 19 forest products and thereby creates a fire hazard, he may be
 20 enjoined from ~~cutting--the further~~ timber ~~harvesting~~
 21 ~~operations~~ until ~~76-13-407 and~~ 76-13-408 ~~and-76-13-409~~ have
 22 been complied with. The department may initiate the
 23 proceedings, and the--court may in--its--discretion--grant
 24 ~~obtain~~ a temporary restraining order, injunction, or writ of
 25 mandate. The proceedings shall be conducted in the district

1 court of the county where the land is located.

2 (2) If a person fails to comply with ~~76-13-407~~ or
 3 76-13-408 and ~~76-13-409~~ and has cut any forest products and
 4 fails to comply within 30 days after being notified to do
 5 so by the department, the department may complete, direct,
 6 or authorize the disposal of the slash at the expense of the
 7 owner of the timber or other forest products cut or produced
 8 from the land upon which the undisposed of fire hazard
 9 remains.

10 (3) The cost and expense of the disposal, plus 20% of
 11 the cost and expense of the disposal as a penalty,
 12 constitutes a lien upon the forest products so cut or
 13 produced from the land. If payment of the sum demanded is
 14 not made to the department within 10 days of its written
 15 demand, the department shall bring legal action on behalf of
 16 the state to recover the debt."

17 NEW SECTION. Section 5. Failure to submit withholding
 18 -- remedy. (1) If a purchaser does not submit withheld money
 19 on or before the 15th day of each month when required to do
 20 so under 76-13-407, he must be notified by registered or
 21 certified mail that he is in noncompliance and be given 15
 22 days to submit all money then due. If he fails to submit all
 23 money due within the required time, the department may
 24 initiate proceedings to enjoin further processing of all
 25 wood products until all money due is paid in full or

1 satisfactory arrangements for payments are made.

2 (2) If payment is not made within the 15-day period
 3 after notification as provided in subsection (1), a penalty
 4 of 5% of the amount due must be assessed. The department may
 5 abate the penalty if the purchaser establishes that the
 6 failure to submit the amount due as required was due to
 7 reasonable cause and was not due to neglect on his part. The
 8 department, in addition to the penalty, may impose interest
 9 at the rate of 10% a year on any balance remaining unpaid.

10 SECTION 6. THERE IS A NEW NCA SECTION THAT READS:

11 Money withheld -- held in trust for state warrants to
 12 collect -- levy upon and sale of property. (1) Every
 13 purchaser who withholds any money under 76-13-409 shall hold
 14 it in trust for the state. If these moneys are not paid to
 15 the department within 60 days after they have been withheld,
 16 the department may issue a warrant under its official seal
 17 directed to the sheriff of any county of the state
 18 commanding him to levy upon and sell the real and personal
 19 property of the purchaser owning that property found in his
 20 county, for the payment of the amount with added penalties,
 21 interest, and the cost of executing the warrant. The warrant
 22 shall be returned to the department with the money collected
 23 not more than 60 days from the date of the warrant.

24 (2) The sheriff shall, within 5 days after the receipt
 25 of the warrant, file with the clerk of the district court of

1 his county a copy of the warrant. The clerk shall enter in
2 the judgment docket, in the column for judgment debtors, the
3 name of the purchaser mentioned in the warrant and in
4 appropriate columns the amount of the withheld sums or
5 portion thereof and penalties for which the warrant is
6 issued and the date when such copy is filed. The amount of
7 the warrant so docketed shall then become a lien upon the
8 title to and interest in real property or chattels real of
9 the person against whom it is levied in the same manner as
10 judgment docketed in the office of the clerk.

11 (3) The sheriff shall then proceed in the same manner
12 prescribed by law in respect to executions issued against
13 property upon judgments of a court of record. The sheriff is
14 entitled to the same fees for his services in executing the
15 warrant and may collect them in the same manner.

16 (4) If a warrant is returned not satisfied in full,
17 the department has the same remedies to enforce the claim
18 for the withheld sums against the purchaser as if the people
19 of the state had recovered judgment against the purchaser
20 for the amount of the withheld sums.

-End-

HOUSE BILL NO. 759

INTRODUCED BY BERTELSEN, BENNETT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE LAWS RELATED TO FOREST FIRE HAZARD REDUCTION; TO INCREASE HAZARD REDUCTION WITHHOLDING RATES AND MAKE THEM MORE ENFORCEABLE; AND AMENDING SECTIONS 76-13-404, 76-13-407, 76-13-409, AND 76-13-410, MCA."

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(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department, it may grant a permit extending the time within which the burning must be done in compliance with this chapter relating to burning permits during the closed season.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts,

1 whether the work is done by day labor or by contract, and
 2 unless unavoidable emergency prevents, provision shall be
 3 made by the proper officials conducting, directing, or
 4 letting the work for withholding until it is complete a
 5 sufficient portion of the payment therefor to assure
 6 compliance with this part.

7 ~~{4}--in--addition--to--the--penalty--provided--in--76-13-412--~~
 8 ~~the--offender--may--be--enjoined--at--the--instance--of--the~~
 9 ~~department--from--proceeding--with--the--work--until--this--section~~
 10 ~~has--been--complied--with--Upon--application--of--the--department~~
 11 ~~to--any--court--of--competent--jurisdiction--a--writ--of--mandate~~
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 13 ~~this--section."~~

14 Section 3. Section 76-13-409, MCA, is amended to read:

15 "76-13-409. Duty of purchaser to insure compliance.
 16 (1) The initial purchaser of forest products which have been
 17 cut or are about to be cut from any private lands within the
 18 state shall, before making the purchase or contract to
 19 purchase, determine that the person engaged or about to
 20 engage in the cutting of these forest products has provided
 21 for the reduction or management of the fire hazard thus
 22 created, as provided in this part.

23 (2) When the hazard reduction agreement provides that
 24 the purchaser of forest products shall withhold moneys to
 25 insure faithful compliance with this part, the purchaser

1 shall transmit all moneys which are withheld to the
 2 department on or before the 15th day of each month, clearly
 3 identifying by number or other appropriate means the hazard
 4 reduction agreement to which the withheld moneys pertain.
 5 The purchaser shall keep accurate records of the purchase
 6 and the amounts withheld, which may be inspected by the
 7 department at any reasonable time.

8 (3) Upon the department making the determination that
 9 faithful compliance with this part has been achieved, the
 10 department shall return to the owner thereof all such
 11 withheld money with the exception of ~~25~~ ~~100~~ ~~25~~ for
 12 inspection, fee administration, enforcement, and smoke
 13 management."

14 Section 4. Section 76-13-410, MCA, is amended to read:

15 "76-13-410. Failure to comply. (1) If a person fails,
 16 refuses, or neglects to properly dispose of slash in
 17 accordance with the requirements of 76-13-407 and 76-13-408
 18 ~~and--76-13-409~~ and is engaged or is about to engage, either
 19 for himself or for another, in cutting timber or other
 20 forest products and thereby creates a fire hazard, he may be
 21 enjoined from ~~cutting--the~~ further timber harvesting
 22 operations until 76-13-407 and 76-13-408 ~~and--76-13-409~~ have
 23 been complied with. The department may initiate the
 24 proceedings, and the court may ~~in--its--discretion--obtain~~
 25 obtain a temporary restraining order, injunction, or

1 ~~mandate.~~ The proceedings shall be conducted in the district
2 court of the county where the land is located.

3 (2) If a person fails to comply with ~~76-13-407~~ or
4 76-13-408 and ~~76-13-409~~ and has cut any forest products and
5 fails to comply within 30 days after being notified to do
6 so by the department, the department may complete, direct,
7 or authorize the disposal of the slash at the expense of the
8 owner of the timber or other forest products cut or produced
9 from the land upon which the undisposed of fire hazard
10 remains.

11 (3) The cost and expense of the disposal, plus 20% of
12 the cost and expense of the disposal as a penalty,
13 constitutes a lien upon the forest products so cut or
14 produced from the land. If payment of the sum demanded is
15 not made to the department within 10 days of its written
16 demand, the department shall bring legal action on behalf of
17 the state to recover the debt.*

18 NEW SECTION. Section 5. Failure to submit withholding
19 -- remedy. (1) If a purchaser does not submit withheld money
20 on or before the 15th day of each month when required to do
21 so under 76-13-407, he must be notified by registered or
22 certified mail that he is in noncompliance and be given 15
23 days to submit all money then due. If he fails to submit all
24 money due within the required time, the department may
25 initiate proceedings to enjoin further processing of all

1 wood products until all money due is paid in full or
2 satisfactory arrangements for payments are made.

3 (2) If payment is not made within the 15-day period
4 after notification as provided in subsection (1), a penalty
5 of 5% of the amount due must be assessed. The department may
6 abate the penalty if the purchaser establishes that the
7 failure to submit the amount due as required was due to
8 reasonable cause and was not due to neglect on his part. The
9 department, in addition to the penalty, may impose interest
10 at the rate of 10% a year on any balance remaining unpaid.

11 ~~SECTION 6. THERE IS A NEW NEW SECTION THAT READS:~~
12 ~~Money withheld---held-in-trust-for-state--warrants--to~~
13 ~~collect-----levy--upon--and--sale--of--property--(1) Every~~
14 ~~purchaser who withholds any money under 76-13-409 shall hold~~
15 ~~it in trust for the state--if these moneys are not paid--to~~
16 ~~the department within 60 days after they have been withheld~~
17 ~~the--department--may issue a warrant under its official seal~~
18 ~~directed--to--the--sheriff--of--any--county--of--the--state~~
19 ~~commanding--him--to--levy--upon--and--sell--the--real--and--personal~~
20 ~~property--of--the--purchaser--owning--that--property--found--in--his~~
21 ~~county--for--the--payment--of--the--amount--with--added--penalties,~~
22 ~~interest, and the cost of executing the warrants. The warrant~~
23 ~~shall be returned to the department with the money collected~~
24 ~~not more than 60 days from the date of the warrant.~~
25 ~~(2) The sheriff shall, within 5 days after the receipt~~
26

1 of the warrant file with the clerk of the district court of
2 his county a copy of the warrant the clerk shall enter in
3 the judgment docket in the column for judgment debtors the
4 name of the purchaser mentioned in the warrant and in
5 appropriate columns the amount of the withheld sums or
6 portion thereof and penalties for which the warrant is
7 issued and the date when such copy is filed the amount of
8 the warrant so docketed shall then become a lien upon the
9 title to and interest in real property or chattels real of
10 the person against whom it is levied in the same manner as
11 judgment docketed in the office of the clerk

12 (3) The sheriff shall then proceed in the same manner
13 prescribed by law in respect to executions issued against
14 property upon judgments of a court of records The sheriff is
15 entitled to the same fees for his services in executing the
16 warrant and may collect them in the same manner

17 (4) If a warrant is returned not satisfied in full
18 the department has the same remedies to enforce the claim
19 for the withheld sums against the purchaser as if the people
20 of the state had recovered judgment against the purchaser
21 for the amount of the withheld sums

-End-

1 HOUSE BILL NO. 759
 2 INTRODUCED BY BERTELSEN, BENNETT
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 6 THE LAWS RELATED TO FOREST FIRE HAZARD REDUCTION; TO
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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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 14 department may, in such form and containing such conditions
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 16 any forest lands or any operator engaged in operations on
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 18 contract the department may assume all responsibility for
 19 the reduction or management of any fire hazard. The
 20 department may provide in the agreement the amount to be
 21 paid by the owner or operator to the department by reason of
 22 its agreement to assume the reduction or management of the
 23 fire hazard, but the amount may not exceed \$5 ~~47,500~~ 16 for
 24 each 1,000 feet log scale or the equivalent thereof if
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1 Section 2. Section 76-13-407, MCA, is amended to read:
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 4 railroad, public highway, public trail, private road, trail,
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 6 transmission or transportation utility right-of-way, except
 7 temporary roads located within the boundaries of the cutting
 8 area and which are used in the actual logging operations,
 9 shall reduce the hazard resulting from the clearing or from
 10 the cutting of material for the construction of the public
 11 or private utility unless exempted by the department. At
 12 least 10 days before commencement of the clearing, the
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 14 of commencement of the clearing in the form and manner the
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 17 method of disposal is used, shall be done as rapidly as
 18 cutting or clearing progresses; however, upon application to
 19 the department, it may grant a permit extending the time
 20 within which the burning must be done in compliance with
 21 this chapter relating to burning permits during the closed
 22 season.
 23 (3) This section applies to all clearing of
 24 rights-of-way across private land and on behalf of the
 25 state, county, highway districts, and road districts,

1 whether the work is done by day labor or by contract, and
 2 unless unavoidable emergency prevents, provision shall be
 3 made by the proper officials conducting, directing, or
 4 letting the work for withholding until it is complete a
 5 sufficient portion of the payment therefor to assure
 6 compliance with this part.

7 ~~{4}--In--addition--to--the--penalty--provided--in--76-13-412,~~
 8 ~~the--offender--may--be--enjoined--at--the--instance--of--the~~
 9 ~~department--from--proceeding--with--the--work--until--this--section~~
 10 ~~has--been--complied--with--upon--application--of--the--department~~
 11 ~~to--any--court--of--competent--jurisdiction--a--writ--of--mandate~~
 12 ~~shall--issue--compelling--the--offender--to--fully--comply--with~~
 13 ~~this--sections."~~

14 Section 3. Section 76-13-409, MCA, is amended to read:

15 "76-13-409. Duty of purchaser to insure compliance.
 16 (1) The initial purchaser of forest products which have been
 17 cut or are about to be cut from any private lands within the
 18 state shall, before making the purchase or contract to
 19 purchase, determine that the person engaged or about to
 20 engage in the cutting of these forest products has provided
 21 for the reduction or management of the fire hazard thus
 22 created, as provided in this part.

23 (2) When the hazard reduction agreement provides that
 24 the purchaser of forest products shall withhold moneys to
 25 insure faithful compliance with this part, the purchaser

1 shall transmit all moneys which are withheld to the
 2 department on or before the 15th day of each month, clearly
 3 identifying by number ~~or--other--appropriate--means~~ the hazard
 4 reduction agreement to which the withheld moneys pertain.
 5 The purchaser shall keep accurate records of the purchase
 6 and the amounts withheld, which may be inspected by the
 7 department at any reasonable time.

8 (3) Upon the department making the determination that
 9 faithful compliance with this part has been achieved, the
 10 department shall return to the owner thereof all such
 11 withheld money with the exception of 2% ~~10%~~ ~~2%~~ ~~4%~~ for
 12 inspection, fees administration, enforcement, and smoke
 13 management."

14 Section 4. Section 76-13-410, MCA, is amended to read:

15 "76-13-410. Failure to comply. (1) If a person fails,
 16 refuses, or neglects to properly dispose of slash in
 17 accordance with the requirements of 76-13-407 and 76-13-408
 18 ~~and--76-13-409~~ and is engaged or is about to engage, either
 19 for himself or for another, in cutting timber or other
 20 forest products and thereby creates a fire hazard, he may be
 21 enjoined from cutting---the further timber harvesting
 22 operations until 76-13-407 and 76-13-408 ~~and--76-13-409~~ have
 23 been complied with. The department may initiate the
 24 proceedings, and the--court may in--its--discretion--grant
 25 obtain a temporary restraining order, injunction, or writ of

1 ~~mandate.~~ The proceedings shall be conducted in the district
2 court of the county where the land is located.

3 (2) If a person fails to comply with ~~76-13-407 or~~
4 ~~76-13-408 and 76-13-409~~ and has cut any forest products and
5 fails to comply within 30 days after being notified to do
6 so by the department, the department may complete, direct,
7 or authorize the disposal of the slash at the expense of the
8 owner of the timber or other forest products cut or produced
9 from the land upon which the undisposed of fire hazard
10 remains.

11 (3) The cost and expense of the disposal, plus 20% of
12 the cost and expense of the disposal as a penalty,
13 constitutes a lien upon the forest products so cut or
14 produced from the land. If payment of the sum demanded is
15 not made to the department within 10 days of its written
16 demand, the department shall bring legal action on behalf of
17 the state to recover the debt."

18 NEW SECTION. Section 5. Failure to submit withholding
19 -- remedy. (1) If a purchaser does not submit withheld money
20 on or before the 15th day of each month when required to do
21 so under 76-13-407, he must be notified by registered or
22 certified mail that he is in noncompliance and be given 15
23 days to submit all money then due. If he fails to submit all
24 money due within the required time, the department may
25 initiate proceedings to enjoin further processing of all

1 wood products until all money due is paid in full or
2 satisfactory arrangements for payments are made.

3 (2) If payment is not made within the 15-day period
4 after notification as provided in subsection (1), a penalty
5 of 5% of the amount due must be assessed. The department may
6 abate the penalty if the purchaser establishes that the
7 failure to submit the amount due as required was due to
8 reasonable cause and was not due to neglect on his part. The
9 department, in addition to the penalty, may impose interest
10 at the rate of 10% a year on any balance remaining unpaid.

11 ~~SECTION 6. THERE IS A NEW MGA SECTION THAT READS:~~

12 ~~Money withheld --- held in trust for state --- warrants --- to~~
13 ~~collect --- levy upon and sale of property --- (1) Every~~
14 ~~purchaser who withholds any money under 76-13-409 shall hold~~
15 ~~it in trust for the state --- if these moneys are not paid --- to~~
16 ~~the department within 60 days after they have been withheld,~~
17 ~~the department may issue a warrant under its official seal~~
18 ~~directed to the sheriff of any county of the state~~
19 ~~commanding him to levy upon and sell the real and personal~~
20 ~~property of the purchaser owning that property found in his~~
21 ~~county, for the payment of the amount with added penalties,~~
22 ~~interest, and the cost of executing the warrants. The warrant~~
23 ~~shall be returned to the department with the money collected~~
24 ~~not more than 60 days from the date of the warrants.~~

25 (2) The sheriff shall, within 5 days after the receipt
26

1 of the warrants, file with the clerk of the district court of
2 his county a copy of the warrants. The clerk shall enter in
3 the judgment docket, in the column for judgment debtors, the
4 name of the purchaser mentioned in the warrant and in
5 appropriate columns the amount of the withheld sums or
6 portion thereof and penalties for which the warrant is
7 issued and the date when such copy is filed. The amount of
8 the warrant so docketed shall then become a lien upon the
9 title to and interest in real property or chattels real of
10 the person against whom it is levied in the same manner as
11 judgment docketed in the office of the clerk.

12 (3) The sheriff shall then proceed in the same manner
13 prescribed by law in respect to executions issued against
14 property upon judgments of a court of record. The sheriff is
15 entitled to the same fees for his services in executing the
16 warrant and may collect them in the same manner.

17 (4) If a warrant is returned not satisfied in full,
18 the department has the same remedies to enforce the claim
19 for the withheld sums against the purchaser as if the people
20 of the state had recovered judgment against the purchaser
21 for the amount of the withheld sums.

-End-

March 15, 1979

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 759 be amended as follows:

1. Page 1, line 23.

Following: "\$5"

Strike: "\$7.50"

Insert: "\$6"

2. Page 4, line 11.

Following: "28"

Strike: "108"

Insert: "28"

3. Page 6, line 10 through line 20 on page 7.

Strike: Section 6 in its entirety