

HB 328 INTRODUCED BY SPAETH
REVISE LAWS RELATING TO THE CONTROL OF TIMBER SLASH
AND DEBRIS
BY REQUEST OF DEPARTMENT OF STATE LANDS

1/20 INTRODUCED

1/20 REFERRED TO NATURAL RESOURCES

1/26 HEARING

2/02 COMMITTEE REPORT--BILL NOT PASSED

2/04 ADVERSE COMMITTEE REPORT ADOPTED

75 21

House BILL NO. 328

INTRODUCED BY Spaeth
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS; AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-406 THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, sec. 4, of the Montana Constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced in accordance with this part and with the fire hazard reduction contract or contracts.

(3) "Contractor" means the person who executes the fire hazard reduction contract and is responsible to fulfill the obligation established by the contract.

{2}(4) "Department" means the department of state

lands provided for in Title 2, chapter 15, part 32.

(5) "Fire hazard" means sufficient slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations to produce a cover of flammable material in which fire could spread through a cutting or the adjacent area.

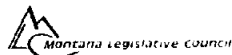
(6) "Fire hazard reduction" means the treatment of a fire hazard by methods necessary to provide reasonable safety to the residual timber stand, to future stands, and to the property of others. Such methods include but are not limited to lopping and scattering, hand or bulldozer piling and burning, removal, or chipping.

(7) "Fire hazard reduction contract" means a contract made to ensure compliance with this part and with the applicable rules for the reduction of a fire hazard.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, pilings, limbs, branches, or bark. The term also includes but is not limited to cants, studs, crossties, or other products manufactured on the cutting area.

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

(10) "Purchaser" means a person who purchases or contracts to purchase forest products cut from private forest lands within the state."



1 Section 2. Section 76-13-402, MCA, is amended to read:

2 "76-13-402. Basis for management of fire hazards. The
3 reduction or management of fire hazards referred to in this
4 part shall be carried on by the department ~~and the state~~
5 ~~fire wardens~~ in keeping with modern and progressive forest
6 practices and more effective fire control and may include
7 but is not limited to the taking of protective measures to
8 prevent injury or the destruction of forest resources
9 without actual abatement of the hazard."

10 Section 3. Section 76-13-403, MCA, is amended to read:

11 "76-13-403. Supervision by department. The department,
12 under such rules as the board adopts, may supervise and
13 inspect the reduction or management of any fire hazard
14 created by the cutting of any forest product, timber stand
15 improvement, or right-of-way clearing on private land in the
16 state."

17 Section 4. Section 76-13-406, MCA, is amended to read:

18 "76-13-406. Limitation on liability. The department,
19 ~~state fire wardens,~~ and recognized forest protective
20 agencies, including any agency of the United States, with
21 which the department has entered into an agreement for the
22 reduction or management of any fire hazard as provided in
23 76-13-405 and any officer, ~~or official of such agency shall,~~
24 or employee of the department or recognized forest
25 protective agency is not be liable for any damage to the

1 land, product, improvement, or other things of value of
2 whatsoever nature upon the lands on which the fire hazards
3 are being managed or reduced in accordance with provisions
4 of ~~76-13-402 through 76-13-405 and 76-13-411(1)~~ this part
5 and with the applicable rules and the fire hazard reduction
6 contract when all-requisite reasonable care and caution has
7 been used ~~and such work is being or has been performed in~~
8 ~~compliance with the rules provided in 76-13-403."~~

9 Section 5. Section 76-13-407, MCA, is amended to read:

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

24 (2) Hazard reduction, including burning where this
25 method of disposal is used, shall be done as rapidly as

1 cutting or clearing progresses; however, upon application to
2 the department, it may grant a permit extending the time
3 within which the burning must be done in compliance with
4 this chapter relating to burning permits during the closed
5 season.

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

15 Section 6. Section 76-13-408, MCA, is amended to read:

16 "76-13-408. Fire hazard reduction agreement contract
17 and bond. (1) Before cutting any forest product or
18 conducting timber stand improvement such as but not limited
19 to thinning, weeding, or pruning upon private lands within
20 the state, the person conducting such practice shall provide
21 for the reduction or management of the fire hazard to be
22 created by entering into a fire hazard reduction agreement
23 contract with the department and by posting a bond to the
24 state in such form and for such amount as may be prescribed
25 by the department. The bond may not exceed \$10 for each

1 1,000 feet log scale or the equivalent thereof if forest
2 products other than logs are cut. The contract shall be
3 conditioned upon full and faithful compliance with all
4 requirements under this part and the faithful reduction or
5 management of the fire hazard in the manner prescribed by
6 law, and by rules adopted by the board, and by the fire
7 hazard reduction contract.

8 (2) The bond shall be released, less the authorized
9 administration fee, upon completion of the work done in
10 compliance with the terms of the agreement contract.

11 (3) All fire hazard reduction moneys withheld by a
12 purchaser are considered to be excise taxes withheld for the
13 benefit of the state within the meaning of the United States
14 Bankruptcy Code.

15 (4) (a) The department may enter into contracts with:
16 (i) owners of forest lands; or
17 (ii) operators engaged in operations on private lands
18 which create slash.

19 (b) Under the contract, for a fee, the department may
20 assume all responsibility for the reduction or management of
21 any fire hazard. The department may include in the contract
22 the amount to be paid by the owner or operator for the
23 department to assume the reduction or management of the fire
24 hazard."

25 Section 7. Section 76-13-409, MCA, is amended to read:

1 "76-13-409. Duty of purchaser to insure compliance.

2 (1) The initial purchaser of forest products which have been
3 cut or are about to be cut from any private lands within the
4 state shall, before making the purchase or contract to
5 purchase, determine that the person engaged or about to
6 engage in the cutting of these forest products has provided
7 for the reduction or management of the fire hazard thus
8 created~~7--as--provided--in--this--part~~ by entering into a fire
9 hazard reduction contract as provided in 76-13-408.

10 (2) When the hazard reduction agreement contract
11 provides that the purchaser of forest products shall
12 withhold moneys to insure faithful compliance with this
13 part, the purchaser shall transmit all moneys which are
14 withheld to the department on or before the 15th day of each
15 month, clearly identifying by number the hazard reduction
16 agreement contract to which the withheld moneys pertain.
17 The purchaser shall keep accurate records of the purchase
18 and the amounts withheld, which may be inspected by the
19 department at any reasonable time.

20 (3) ~~Upon the department making the determination that~~
21 ~~faithful compliance with this part has been achieved, the~~
22 ~~department shall return to the owner thereof all such~~
23 ~~withheld money with the exception of 4% for inspection,~~
24 ~~administration, enforcement, and smoke management.~~ The
25 purchaser shall submit to the department the money withheld

1 and the monthly report required under subsection (2), which
2 must include the volumes of all forest products purchased
3 from private lands. If no money was required to be withheld,
4 the volumes purchased must still be reported to the
5 department."

6 Section 8. Section 76-13-410, MCA, is amended to read:

7 "76-13-410. Failure to comply. (1) If a person fails,
8 refuses, or neglects to properly dispose of slash reduce the
9 fire hazard in accordance with the requirements of either
10 76-13-407 and or 76-13-408, ~~and is engaged or is about to~~
11 ~~engage, either for himself or for another, in cutting timber~~
12 ~~or other forest products and thereby creates a fire hazard,~~
13 he may be enjoined from further timber harvesting operations
14 until either 76-13-407 and or 76-13-408 have has been
15 complied with. The department may initiate the proceedings
16 and may obtain a temporary restraining order, injunction, or
17 writ of mandate. The proceedings shall be conducted in the
18 district court of the county where the land is located.

19 (2) If a person fails to comply with either 76-13-407
20 or 76-13-408 ~~and has cut any forest products~~ and fails to
21 comply within 30 days after being notified to do so by the
22 department, the department may complete, direct, or
23 authorize the disposal of the slash at the expense of the
24 contractor or the owner of the timber or other forest
25 products cut or produced from the land upon which the

1 undisposed of fire hazard remains.

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

9 Section 9. Section 76-13-411, MCA, is amended to read:

10 "76-13-411. Certification of clearance. (1) ~~A--person~~
11 ~~who--has-entered-into-a-contract-with-the-department-for-the~~
12 ~~reduction-or-management-of-any-fire-hazard,--upon-payment--of~~
13 ~~the--contract--price--in--accordance--with--the-terms-of-the~~
14 ~~contract-and-the-full--compliance--with--the--terms--of--the~~
15 ~~contract-by-the-person,--shall-be-granted-a-certification-of~~
16 ~~clearance--by--the-department-and-be-relieved-of-any-and-all~~
17 ~~further-liability-and--responsibility--for--the--removal--or~~
18 ~~reduction--of--the--fire--hazard. The department may require~~
19 ~~that-a-cash-bond,--equivalent--to--the--contract--price--and~~
20 ~~conditioned--upon--the-faithful-performance-of-the-contract,~~
21 ~~be-deposited--by--the--person--with--the--department. Upon~~
22 determination by the department of faithful compliance with
23 this part, the rules adopted hereunder, and the hazard
24 reduction contract, the department shall return to the
25 contractor all withheld moneys, with the exception of 10%

1 for inspection, administration, enforcement, and smoke
2 management. In addition, the contractor must be issued a
3 certification of clearance by the department and be relieved
4 of any further liability or responsibility for removal or
5 reduction of the fire hazard under the hazard reduction
6 contract. The department may require that a cash bond
7 equivalent to the contract price, conditioned upon the
8 faithful performance of the contract, be deposited with the
9 department.

10 (2) The department ~~shall~~ may not file for record any
11 lien against the property of any person who has been issued
12 a certification of compliance with 76-13-408 and 76-13-409
13 covering the property hazard reduction contract for which
14 the certification of compliance has been issued."

15 Section 10. Section 76-13-413, MCA, is amended to
16 read:

17 "76-13-413. Failure to submit ~~withholding~~ withheld
18 money or reports -- remedy. (1) If a purchaser does not
19 submit withheld money or required reports on or before the
20 15th day of each month when required to do so under
21 76-13-409, he must be notified by ~~registered-or~~ certified
22 mail that he is in noncompliance and be given 15 days to
23 submit all money or reports then due. If he fails to submit
24 all money or reports due within the required time, the
25 department may initiate proceedings to enjoin further

1 processing of all wood products until all money due is paid
2 in full or satisfactory arrangements for payments are made
3 and all required reports are submitted.

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

12 NEW SECTION. Section 11. Repealer. Section 76-13-404,
13 MCA, is repealed.

14 NEW SECTION. Section 12. Extension of authority. Any
15 existing authority of the department of state lands or the
16 board of land commissioners to make rules on the subject of
17 the provisions of this act is extended to the provisions of
18 this act.

19 NEW SECTION. Section 13. Effective date. This act is
20 effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB328, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the Department of Administration to contract printing operations through Montana businesses; changing residence requirements; prohibiting the state from engaging in commercial printing; amending Sections 18-1-103, 18-7-101, 18-7-104, 18-7-105, and 18-7-302, MCA; repealing Section 18-7-107, MCA; and providing an effective date and an applicability date.

ASSUMPTIONS:

1. An excessively non-competitive resident bid is defined as 3% over a nonresident bid.
2. Publications and Graphics Division and department print shops would be limited to printing materials intended for internal government use.
3. 8000 printing orders annually would be bid compared to 1000 under current law.
4. Workload of Publications and Graphics Division would decrease by 45%.
5. Montana Code Annotated would return to the commercial sector.
6. Legislative session daily printing - bills, fiscal notes, committee agendas, bill status - would have to be bid out.
7. Random sample of agencies.

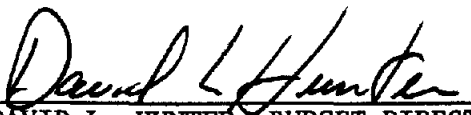
FISCAL IMPACT: (as per agency estimate)

Department of Fish, Wildlife and Parks - No impact on agency if assumption #1 is true. Otherwise there would be an annual additional cost of \$41,000 to print Montana Outdoors Magazine (\$156,000 vs. \$115,000).

Office of Public Instruction - An additional annual cost of \$12,000 which could result in the curtailing or eliminating some services - Montana Schools, OPI Reports, the directory of schools, curriculum brochures, printing for FFA, FHA, OEA.

Department of Justice - Annual increase of \$10,000 for printing currently being done out-of-state.

Department of Highways - Serious impact on department. Plans and related materials for construction projects are submitted to prospective bidders. Outside printing agencies would have difficulty meeting the deadlines and numerous plan changes required for scheduled letting dates. Would delay project lettings and increase the cost of preparing plans. Difficult to estimate dollar figure.

 DATE 2/17/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE 2/19/87
JOE MAZUREK, PRIMARY SPONSOR

Fiscal Note for SB328, as introduced.

50 328

FISCAL IMPACT (continued):

Department of Labor and Industry - Printing to go to outside vendors:

Job vacancy notices - one day turn around printing.

Research and analysis monthly labor market information publications - two day turn around printing.

Research and analysis quarterly publications.

Unemployment Insurance Benefit Rights Booklet currently printed for 12 cents each. Quote from in state firm of 20 cents each.

Unemployment Benefit checks only printed by out of state vendor.

Federal law changes can necessitate immediate changes to forms and booklets with little turn around time.

Additional annual cost to the agency of \$42,766.

Department of Institutions:

The Prison Industries Print Shop would close eliminating eight inmate jobs and saving \$40,000 annually in proprietary funds.

Publications and Graphics Division:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	\$ 626,858	\$ 489,897	(\$ 136,961)	\$ 706,633	\$ 664,332	(\$ 42,301)
Operating Expenses	2,858,124	3,806,572	948,448	3,069,094	3,898,688	829,594
Capital Outlays	384,289	390,095	5,806	376,668	352,474	24,194
TOTAL	\$3,869,271	\$4,686,564	\$ 817,293	\$4,152,395	\$4,915,494	\$ 763,099
<u>Funding:</u>						
General Fund	\$ 0	\$ 465,077	\$ 465,077	\$ 0	\$ 451,192	\$ 451,192
Proprietary Fund	3,869,271	4,221,487	352,216	4,152,395	4,464,302	311,907
TOTAL	\$3,869,271	\$4,686,564	\$ 817,293	\$4,152,395	\$4,915,494	\$ 763,099

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The legislation imposes artificial restraints on competition which will eventually lead to even greater increases in printing costs. Presently, the state has 152 bidders competing for its work. This bill would effectively reduce that number to 67.

The delay and expense caused by the processing of requisitions and bids would encourage agencies to seek alternate sources of reproduction. A dramatic increase in the number and usage of photocopy machines should be anticipated.

Fiscal Note Request, SB328, as introduced.

Form BD-15

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TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

This legislation would necessitate modification of Sections 2-17-301, 18-4-123 and 18-4-221, MCA. New Section 2(2) does not define what constitutes an excessively noncompetitive bid.

Section 4(5) "commercial" needs to be clarified.

Section 7(1) "internal government use" needs clarification.

SB 328