

HOUSE BILL NO. 657

INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 13, 1989	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 95; NOES, 1. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES. FIRST READING.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989	RECEIVED FROM SENATE.
----------------	-----------------------

APRIL 1, 1989

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *657*
 2 INTRODUCED BY *Quiana Smith Peterson*
 3 *A/E Defeat*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 *Whip* LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS;
 6 AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-405
 7 THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION
 8 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 **Section 1.** Section 76-13-401, MCA, is amended to read:
 12 "76-13-401. Definitions. As used in this part, the
 13 following definitions apply:
 14 (1) "Board" means the board of land commissioners
 15 provided for in Article X, ~~see~~ section 4, of the Montana
 16 Constitution.
 17 (2) "Certification of clearance" means a certification
 18 issued by the department acknowledging that the fire hazard
 19 has been reduced or managed in accordance with this part and
 20 the fire hazard reduction agreement or agreements.
 21 (3) "Contractor" means the person who executes the fire
 22 hazard reduction agreement and is responsible to fulfill the
 23 obligations established by the agreement.
 24 ~~{2}~~(4) "Department" means the department of state lands
 25 provided for in Title 2, chapter 15, part 32.

1 (5) "Fire hazard" means slash and debris resulting from
 2 timber cutting, timber stand improvement, or right-of-way
 3 clearing operations that produce a cover of flammable
 4 material in which fire could spread through a cutting or
 5 adjacent area.
 6 (6) "Fire hazard reduction agreement" means a contract
 7 made to ensure compliance with this part and with the rules
 8 adopted under 76-13-403 for fire hazard reduction or
 9 management.
 10 (7) "Fire hazard reduction or management" means the
 11 abatement of a fire hazard by methods that include but are
 12 not limited to separation, removal, scattering, lopping,
 13 crushing, piling and burning, broadcast burning, burying, or
 14 chipping in order to protect the hazard area, adjacent
 15 areas, and the property of others from forest fire.
 16 (8) "Forest product" means trees or their component
 17 parts, including but not limited to logs, poles, branches,
 18 or bark.
 19 (9) "Master fire hazard reduction agreement" means a
 20 fire hazard reduction agreement between the department and
 21 operators conducting ongoing cutting operations or owners of
 22 tracts on which ongoing cutting operations are conducted or
 23 planned.
 24 ~~{3}~~(10) "Person" means an individual, association,
 25 partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

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

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

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

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

Section 4. Section 76-13-405, MCA, is amended to read:

"76-13-405. Contracts with forest protective fire protection agencies. The department is hereby authorized to

enter into contracts with forest fire protection protective agencies, including agencies of the United States, for the fire hazard reduction or management of-such-fire-hazards when in its opinion the work can best be accomplished in that manner."

Section 5. Section 76-13-406, MCA, is amended to read:

"76-13-406. Limitation on liability. The department, state--firewardens, and other recognized forest protective fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for the fire hazard reduction or management of-any fire--hazard as provided in 76-13-405 and any officer, or official, of-such-agency or employee of the department or other recognized forest fire protection agency shall is not be liable for any damage to the land, product, improvement, or other things of value of-whatsoever-nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of 76-13-402--through--76-13-405 and---76-13-411(i) this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when all requisite reasonable care and caution has been used and such the work is being or has been performed in compliance with the rules provided in 76-13-403."

Section 6. Section 76-13-407, MCA, is amended to read:

"76-13-407. Reduction of slash and debris along

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

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

21 (3) This section applies to all clearing of
 22 rights-of-way across private land and on behalf of the
 23 state, county, highway districts, and road districts,
 24 whether the work is done by day labor or by contract, and
 25 unless unavoidable emergency prevents, provision shall be

1 made by the proper officials conducting, directing, or
 2 letting the work for withholding until it is complete a
 3 sufficient portion of the payment therefor to assure
 4 compliance with this part."

5 **Section 7.** Section 76-13-408, MCA, is amended to read:

6 **"76-13-408. Fire hazard reduction agreement and bond.**

7 (1) Before cutting any forest product, constructing,
 8 reconstructing, or improving any road in contemplation of
 9 cutting any forest product, or conducting timber stand
 10 improvement such as but not limited to thinning, weeding, or
 11 pruning upon private lands within the state, the person
 12 conducting ~~such practice~~ the work shall provide for the
 13 reduction or management of the fire hazard to be created by
 14 entering into a fire hazard reduction agreement or a master
 15 fire hazard reduction agreement with the department ~~and by~~
 16 ~~posting a bond to the state in such form and for such amount~~
 17 ~~as may be prescribed by the department,~~ conditioned upon
 18 providing for the full and faithful compliance with all
 19 requirements under this part and the faithful reduction or
 20 management of the fire hazard in the manner prescribed by
 21 law and by rules adopted by the board.

22 (2) Either the person conducting the work or the
 23 purchaser as provided in 76-13-409(2) shall post a bond to
 24 the state in a form and for an amount as may be prescribed
 25 by the department, but the amount may not exceed \$6 for each

1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. In addition, the bond amount may not exceed \$1,000 per cutting unit for timber stand improvement operations in which no saleable product is cut.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

(4) The bond shall must be released upon the issuance of the certificate of clearance completion--of--the work-done-in-compliance-with-the-terms-of-the-agreement."

Section 8. Section 76-13-409, MCA, is amended to read:

"76-13-409. Duty of purchaser to insure ensure compliance -- statement -- bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard ~~thus-created; as--provided--in~~

~~this-part by entering into a fire hazard reduction agreement as provided in 76-13-408.~~

~~(2) When--the--hazard-reduction-agreement-provides-that the The purchaser of-forest-products shall withhold moneys sufficient money to meet the requirements of the bond provided for in 76-13-408 to-insure-faithful-compliance-with this-part; plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement. the The purchaser shall transmit all moneys money and fees which that are withheld and a report of volumes of products purchased to the department on or before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld moneys money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.~~

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

(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the

department.

(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part."

Section 9. Section 76-13-410, MCA, is amended to read:

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

(2) If a person fails to comply with 76-13-407 or 76-13-408 ~~and--has-cut-any--forest-products~~ and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the ~~disposal-of-the-slash~~ fire hazard reduction or management at the expense of the contractor or of the owner

of the timber or other forest products cut or produced from the land upon which the ~~undisposed-of unabated~~ fire hazard remains.

(3) The cost and expense of the ~~disposal~~ fire hazard reduction or management work, plus 20% of the cost and expense of ~~the-disposal the work~~ as a penalty, constitutes a lien upon the forest products ~~so~~ cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt."

Section 10. Section 76-13-411, MCA, is amended to read:

"76-13-411. Certification of clearance. ~~{}~~ When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the contractor must be issued a certification of clearance by the department and be relieved of any further liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement. ~~A--person---who--has entered---into--a--contract--with--the--department--for--the reduction-or-management-of-any-fire-hazard,-upon-payment--of the--contract--price---in--accordance--with--the-terms-of-the contract-and-the-full--compliance--with--the--terms--of--the~~

contract-by-the-person,--shall-be-granted-a-certification-of clearance--by--the-department-and-be-relieved-of-any-and-all further-liability-and--responsibility--for--the--removal--or reduction--of--the--fire--hazard;--The-department-may-require that-a-cash-bond,--equivalent--to--the--contract--price--and conditioned--upon--the-faithful-performance-of-the-contract, be-deposited-by-the--person-with-the-department.

(2)--The-department-shall-not-file-for-record--any--lien against--the--property--of--any-person-who-has-been-issued-a certification-of-compliance--with--76-13-408--and--76-13-409 covering-the-property."

Section 11. Section 76-13-413, MCA, is amended to read:

"76-13-413. Failure to submit withholding -- remedy.

(1) If a purchaser does not submit withheld money and required reports on or before the 15th day of each the following month as provided in when-required-to-do-so--under 76-13-409, he must be notified by registered-or certified mail that he is in noncompliance and be given 15 days to submit all money and reports then due. If he fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full or satisfactory-arrangements-for-payments--are--made and all required reports are submitted.

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

(3) All money withheld by a purchaser for the contractor's bond and for department fees are considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507."

NEW SECTION. Section 12. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is \$25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) or equivalent must be charged if products

1 other than logs are cut. This fee must be withheld by the
2 purchaser as provided in 76-13-409(2), except that any fee
3 money withheld for product volumes exceeding 500,000 board
4 feet per agreement in a calendar year must be returned to
5 the contractor by the department.

6 (3) Fees for master fire reduction agreements must be
7 equal to 100% of the department's actual costs incurred in
8 the administration, inspection, and enforcement of each
9 agreement, and the department shall bill the contractor
10 annually to collect such fees.

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

13 NEW SECTION. **Section 14.** Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [this act].

17 NEW SECTION. **Section 15.** Codification instruction.
18 [Section 12] is intended to be codified as an integral part
19 of Title 76, chapter 13, part 4, and the provisions of Title
20 76, chapter 13, part 4, apply to [section 12].

21 NEW SECTION. **Section 16.** Effective date. [This act] is
22 effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB657, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB657 would generally revise the laws relating to the control of timber slash and debris.

ASSUMPTIONS:

1. The Department of State Lands (DSL) will not have increased workload or expenditures as a result of this proposed law.
2. The department has a current workload increase independent from this bill which has been addressed through a budget modification which adds 2.00 FTE foresters and 0.81 forestry specialist with operating expenses for a total cost of \$104,670 in FY90 and \$71,670 in FY91.
3. Under current law, hazard reduction agreement (HRA) revenue is \$36,000 per annum based on estimated total HRA volume of 150,000 MBF (thousand board feet) x \$6 rate used to bond for contractor performance x 4% (percentage of bond that DSL can retain for administration, inspection and enforcement).
4. Under proposed law, HRA revenue will be \$83,250 per annum based on a projected number of 930 HRAs opened annually x \$25 per HRA issuance fee = \$23,250, plus 100,000 MBF x \$6 rate = \$60,000. The HRA board feet decreases from 150,000 to 100,000 MBF because the latter is the total calculated to be marketed before the 500 MBF maximum volume per agreement is reached under the proposed law.
5. DSL will fund the 1991 biennium hazard reduction budget modification from a combination of proposed law revenue increases and state special slash disposal account cash balance.
6. The department will reduce this modification for the 1993 biennium to the extent state special slash disposal revenue is not available to fund continuation.
7. There is no fiscal impact on the Dept. of Highways, the Dept. of Fish, Wildlife and Parks, the Dept. of Revenue or the Dept. of Commerce.
8. Executive budget figures are used under current law below.

FISCAL IMPACT:

Expenditures: No impact, assuming modification is included in HB100

	<u>FY90</u>			<u>FY91</u>		
	<u>Current</u>	<u>Proposed</u>		<u>Current</u>	<u>Proposed</u>	
<u>Revenues:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
State Special Revenue						
Hazard Reduction Agmts	\$ 36,000	\$ 83,250	\$47,250	\$36,000	\$ 83,250	\$47,250
Master HRAs	34,911	34,911	-0-	30,720	30,720	-0-
State-Do Work	32,000	32,000	-0-	32,000	32,000	-0-
Total	\$102,911	\$150,161	\$47,250	\$98,720	\$145,970	\$47,250

Ray Shackelford
 RAY SHACKLEFORD, BUDGET DIRECTOR
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/18/89

Lum Owens
 LUM OWENS, PRIMARY SPONSOR

DATE 2/18/89

Fiscal Note for HB657, as introduced

HB657

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 657

INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN

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, 76-13-405 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-~~ section 4, of the Montana Constitution.

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

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

~~(2)~~(4) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

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

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or ~~chipping in--order--to--protect--the--hazard-area--adjacent areas--and--the--property--of--others--from--forest--fire.~~

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and ~~operators-conducting-ongoing-cutting-operations-or-owners-of tracts-on-which-ongoing-cutting-operations-are-conducted--or planned~~ PERSONS ENGAGED IN CONTINUING CUTTING OPERATIONS OF SUFFICIENT NUMBER AND SIZE TO WARRANT COVERING THESE OPERATIONS UNDER A SINGLE AGREEMENT AND A SINGLE BOND.

1 ~~†3†(10)~~ "Person" means an individual, association,
2 partnership, corporation, estate, or any other entity.

3 (11) "Purchaser" means a person who purchases or
4 contracts to purchase any forest products cut from private
5 forest lands within the state. The term includes persons
6 who purchase products manufactured on the cutting area."

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

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

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

18 "76-13-403. Supervision by department. The department,
19 under such rules as adopted by the board adopts, may
20 supervise and inspect the fire hazard reduction or
21 management of any all fire hazard hazards created by the
22 ~~cutting-of-any-forest-product~~ forest products harvesting,
23 timber stand improvement, and right-of-way clearing on
24 private land in the state."

25 **Section 4.** Section 76-13-405, MCA, is amended to read:

1 "76-13-405. Contracts with forest protective fire
2 protection agencies. The department is hereby authorized to
3 enter into contracts with forest fire protection protective
4 agencies, including agencies of the United States, for the
5 fire hazard reduction or management ~~of--such--fire--hazards~~
6 when in its opinion the work can best be accomplished in
7 that manner."

8 **Section 5.** Section 76-13-406, MCA, is amended to read:

9 "76-13-406. Limitation on liability. The department,
10 ~~state--firewardens,~~ and other recognized forest protective
11 fire protection agencies, including any agency of the United
12 States, with which the department has entered into an
13 agreement for the fire hazard reduction or management ~~of-any~~
14 ~~fire--hazard~~ as provided in 76-13-405 and any officer, or
15 official, ~~of-such-agency~~ or employee of the department or
16 other recognized forest fire protection agency shall is not
17 be liable for any damage to the land, product, improvement,
18 or other things of value ~~of-whatsoever-nature~~ upon the lands
19 on which the fire hazards are being managed or reduced in
20 accordance with provisions of ~~76-13-402--through--76-13-405~~
21 ~~and---76-13-411†††~~ this part, the rules adopted under
22 76-13-403, and the fire hazard reduction agreement when all
23 requisite reasonable care and caution has been used and such
24 the work is being or has been performed in compliance with
25 the rules provided in 76-13-403."

Section 6. 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~~ excluding 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,

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

Section 7. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond.

(1) Before cutting any forest product, ~~constructing, OR reconstructing, or improving~~ any road in contemplation of cutting any forest product, or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting ~~such--practice~~ the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement ~~or a master fire hazard reduction agreement~~ with the department and--by posting a bond to the state in such form and for such amount as--may--be--prescribed--by the department, conditioned upon providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) Either the person conducting the work or the purchaser as provided in 76-13-409(2) shall post a bond to

the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. ~~In addition, the bond amount may not exceed \$1,000 per cutting unit for timber stand improvement operations in which no saleable product is cut.~~

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

~~(2)(4)~~ The bond ~~shall~~ must be released upon the issuance of the certificate of clearance completion ~~of the work done in compliance with the terms of the agreement.~~

Section 8. Section 76-13-409, MCA, is amended to read:

"76-13-409. Duty of purchaser to insure ~~ensure~~ compliance -- statement -- bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of

these forest products has provided for the reduction or management of the fire hazard ~~thus created, as provided in this part~~ by entering into a fire hazard reduction agreement as provided in 76-13-408.

(2) ~~When the hazard reduction agreement provides that~~ the The purchaser of forest products shall withhold moneys sufficient money to meet the requirements of the bond provided for in 76-13-408 ~~to insure faithful compliance with this part,~~ plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement. ~~the~~ The purchaser shall transmit all moneys money and fees which that are withheld and a report of volumes of products purchased to the department on or before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld moneys money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

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

(3) If forest products are not received or purchased

1 in a given month, a report showing a zero balance and
 2 stating that products were not purchased must be submitted
 3 to the department.

4 (4) The department may require the purchaser to post a
 5 bond to the state in a form and for an amount as may be
 6 prescribed by the department to ensure faithful compliance
 7 with this part."

8 **Section 9.** Section 76-13-410, MCA, is amended to read:

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

22 (2) If a person fails to comply with 76-13-407 or
 23 76-13-408 ~~and--has-cut--any--forest-products~~ and fails to
 24 comply within 30 days after being notified to do so by the
 25 department, the department may complete, direct, or

1 authorize the ~~dispose-of-the-stash~~ fire hazard reduction or
 2 management at the expense of the contractor or of the owner
 3 of the timber or other forest products cut or produced from
 4 the land upon which the ~~undisposed-of unabated~~ fire hazard
 5 remains.

6 (3) The cost and expense of the ~~dispose~~ fire hazard
 7 reduction or management work, plus 20% of the cost and
 8 expense of ~~the-disposal~~ the work as a penalty, constitutes a
 9 lien upon the forest products ~~so~~ cut or produced from the
 10 land and upon the real and personal property of the
 11 contractor. If payment of the sum demanded is not made to
 12 the department within 10 days of its written demand, the
 13 department shall bring legal action on behalf of the state
 14 to recover the debt."

15 **Section 10.** Section 76-13-411, MCA, is amended to
 16 read:

17 "76-13-411. Certification of clearance. ~~††~~ When the
 18 department makes a determination of faithful compliance by
 19 the contractor with this part, the rules adopted under
 20 76-13-403, and the hazard reduction agreement, the
 21 contractor must be issued a certification of clearance by
 22 the department and be relieved of any further liability or
 23 responsibility for fire hazard reduction or management under
 24 the fire hazard reduction agreement. A--person--who-has
 25 entered--into--a--contract--with--the--department--for--the

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

11 {2}--The department shall not file for record any lien
 12 against the property of any person who has been issued a
 13 certification of compliance with 76-13-408 and 76-13-409
 14 covering the property."

15 **Section 11.** Section 76-13-413, MCA, is amended to
 16 read:

17 "76-13-413. Failure to submit withholding -- remedy.
 18 (1) If a purchaser does not submit withheld money and
 19 required reports on or before the 15th day of each the
 20 following month as provided in 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 and reports then due. If he fails to submit
 24 all money due within the required time, the department may
 25 initiate a lien upon the real property of the purchaser and

1 may initiate proceedings to enjoin further processing of all
 2 wood products until all money due is paid in full or
 3 satisfactory arrangements for payments are made and all
 4 required reports are submitted.

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

15 (3) All money withheld by a purchaser for the
 16 contractor's bond and for department fees are considered to
 17 be excise taxes withheld for the benefit of the state within
 18 the meaning of 11 U.S.C. 507."

19 **NEW SECTION. Section 12. Fees.** (1) In addition to any
 20 bond, the department shall charge the contractor fees for
 21 administration, inspections, and enforcement work conducted
 22 in the exercise of its duties under this part. The fees
 23 must be deposited in the state special revenue fund to the
 24 credit of the department.

25 (2) (a) The fee for a fire hazard reduction agreement

1 is \$25 and must be collected by the department upon issuance
2 of the agreement.

3 (b) In addition, a fee of 60 cents for each 1,000
4 board feet (log scale) or equivalent must be charged if
5 products other than logs are cut. This fee must be withheld
6 by the purchaser as provided in 76-13-409(2), except that
7 any fee money withheld for product volumes exceeding 500,000
8 board feet per agreement in a calendar year must be returned
9 to the contractor by the department.

10 (3) Fees for master fire reduction agreements must be
11 equal to 100% of the department's actual costs incurred in
12 the administration, inspection, and enforcement of each
13 agreement, and the department shall bill the contractor
14 annually to collect such fees.

15 NEW SECTION. **Section 13.** Repealer. Section 76-13-404,
16 MCA, is repealed.

17 NEW SECTION. **Section 14.** Extension of authority. Any
18 existing authority to make rules on the subject of the
19 provisions of [this act] is extended to the provisions of
20 [this act].

21 NEW SECTION. **Section 15.** Codification instruction.
22 [Section 12] is intended to be codified as an integral part
23 of Title 76, chapter 13, part 4, and the provisions of Title
24 76, chapter 13, part 4, apply to [section 12].

25 NEW SECTION. **Section 16.** Effective date. [This act]

1 is effective July 1, 1989.

-End-

1 HOUSE BILL NO. 657

2 INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS;
6 AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-405
7 THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION
8 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

12 "76-13-401. Definitions. As used in this part, the
13 following definitions apply:14 (1) "Board" means the board of land commissioners
15 provided for in Article X, ~~sec-~~ section 4, of the Montana
16 Constitution.17 (2) "Certification of clearance" means a certification
18 issued by the department acknowledging that the fire hazard
19 has been reduced or managed in accordance with this part and
20 the fire hazard reduction agreement or agreements.21 (3) "Contractor" means the person who executes the
22 fire hazard reduction agreement and is responsible to
23 fulfill the obligations established by the agreement.24 (4) "Department" means the department of state
25 lands provided for in Title 2, chapter 15, part 32.1 (5) "Fire hazard" means slash and debris resulting
2 from timber cutting, timber stand improvement, or
3 right-of-way clearing operations that produce a cover of
4 flammable material in which fire could spread through a
5 cutting or adjacent area.6 (6) "Fire hazard reduction agreement" means a contract
7 made to ensure compliance with this part and with the rules
8 adopted under 76-13-403 for fire hazard reduction or
9 management.10 (7) "Fire hazard reduction or management" means the
11 abatement of a fire hazard by methods that include but are
12 not limited to separation, removal, scattering, lopping,
13 crushing, piling and burning, broadcast burning, burying, or
14 chipping in--order--to--protect--the--hazard-area, adjacent
15 areas, and the property of others from forest fire.16 (8) "Forest product" means trees or their component
17 parts, including but not limited to logs, poles, branches,
18 or bark.19 (9) "Master fire hazard reduction agreement" means a
20 fire hazard reduction agreement between the department and
21 operators conducting ongoing cutting operations or owners of
22 tracts on which ongoing cutting operations are conducted or
23 planned PERSONS ENGAGED IN CONTINUING CUTTING OPERATIONS OF
24 SUFFICIENT NUMBER AND SIZE TO WARRANT COVERING THESE
25 OPERATIONS UNDER A SINGLE AGREEMENT AND A SINGLE BOND.

1 ~~†3†~~(10) "Person" means an individual, association,
2 partnership, corporation, estate, or any other entity.

3 (11) "Purchaser" means a person who purchases or
4 contracts to purchase any forest products cut from private
5 forest lands within the state. The term includes persons
6 who purchase products manufactured on the cutting area."

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

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

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

18 **"76-13-403. Supervision by department.** The department,
19 under such rules as adopted by the board adopts, may
20 supervise and inspect the fire hazard reduction or
21 management of any all fire hazard hazards created by the
22 cutting-of-any-forest-product forest products harvesting,
23 timber stand improvement, and right-of-way clearing on
24 private land in the state."

25 **Section 4.** Section 76-13-405, MCA, is amended to read:

1 **"76-13-405. Contracts with forest protective fire**
2 protection agencies. The department is hereby authorized to
3 enter into contracts with forest fire protection protective
4 agencies, including agencies of the United States, for the
5 fire hazard reduction or management ~~of--such--fire--hazards~~
6 when in its opinion the work can best be accomplished in
7 that manner."

8 **Section 5.** Section 76-13-406, MCA, is amended to read:

9 **"76-13-406. Limitation on liability.** The department,
10 ~~state--firewardens,~~ and other recognized forest protective
11 fire protection agencies, including any agency of the United
12 States, with which the department has entered into an
13 agreement for the fire hazard reduction or management ~~of--any~~
14 ~~fire--hazard~~ as provided in 76-13-405 and any officer, or
15 official, ~~of--such--agency~~ or employee of the department or
16 other recognized forest fire protection agency shall is not
17 be liable for any damage to the land, product, improvement,
18 or other things of value of--whatsoever--nature upon the lands
19 on which the fire hazards are being managed or reduced in
20 accordance with provisions of ~~76-13-402--through--76-13-405~~
21 ~~and--76-13-411††~~ this part, the rules adopted under
22 76-13-403, and the fire hazard reduction agreement when all
23 requisite reasonable care and caution has been used and such
24 the work is being or has been performed in compliance with
25 the rules provided in 76-13-403."

Section 6. 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~~ excluding 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,

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

Section 7. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond.

(1) Before cutting any forest product, ~~constructing, OR reconstructing, or improving any road in contemplation of cutting any forest product,~~ or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting ~~such--practice~~ the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement ~~or a master fire hazard reduction agreement~~ with the department ~~and--by posting-a-bond-to-the-state-in-such-form-and-for-such-amount as--may--be--prescribed--by-the-department,~~ conditioned upon providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) Either the person conducting the work or the purchaser as provided in 76-13-409(2) shall post a bond to

the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. In addition, the bond amount may not exceed \$1,000 per cutting unit for timber stand improvement operations in which no saleable product is cut.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

{2}(4) The bond shall must be released upon the issuance of the certificate of clearance completion--of--the work done in compliance with the terms of the agreement."

Section 8. Section 76-13-409, MCA, is amended to read:

"76-13-409. Duty of purchaser to insure ensure compliance -- statement -- bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of

these forest products has provided for the reduction or management of the fire hazard thus created, as provided in this part by entering into a fire hazard reduction agreement as provided in 76-13-408.

(2) When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys sufficient money to meet the requirements of the bond provided for in 76-13-408 to insure faithful compliance with this part, plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement, the purchaser shall transmit all moneys money and fees which that are withheld and a report of volumes of products purchased to the department on or before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld moneys money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

{3}--Upon the department making the determination that faithful compliance with this part has been achieved, the department shall return to the owner thereof all such withheld money with the exception of 4% for inspection, administration, enforcement, and smoke management.

(3) If forest products are not received or purchased

1 in a given month, a report showing a zero balance and
 2 stating that products were not purchased must be submitted
 3 to the department.

4 (4) The department may require the purchaser to post a
 5 bond to the state in a form and for an amount as may be
 6 prescribed by the department to ensure faithful compliance
 7 with this part."

8 **Section 9.** Section 76-13-410, MCA, is amended to read:

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

22 (2) If a person fails to comply with 76-13-407 or
 23 76-13-408 and--has--cut--any--forest-products and fails to
 24 comply within 30 days after being notified to do so by the
 25 department, the department may complete, direct, or

1 authorize the disposal-of-the-slash fire hazard reduction or
 2 management at the expense of the contractor or of the owner
 3 of the timber or other forest products cut or produced from
 4 the land upon which the undisposed-of unabated fire hazard
 5 remains.

6 (3) The cost and expense of the disposal fire hazard
 7 reduction or management work, plus 20% of the cost and
 8 expense of the-disposal the work as a penalty, constitutes a
 9 lien upon the forest products so cut or produced from the
 10 land and upon the real and personal property of the
 11 contractor. If payment of the sum demanded is not made to
 12 the department within 10 days of its written demand, the
 13 department shall bring legal action on behalf of the state
 14 to recover the debt."

15 **Section 10.** Section 76-13-411, MCA, is amended to
 16 read:

17 "76-13-411. Certification of clearance. ~~{}~~ When the
 18 department makes a determination of faithful compliance by
 19 the contractor with this part, the rules adopted under
 20 76-13-403, and the hazard reduction agreement, the
 21 contractor must be issued a certification of clearance by
 22 the department and be relieved of any further liability or
 23 responsibility for fire hazard reduction or management under
 24 the fire hazard reduction agreement. A--person--who-has
 25 entered--into--a--contract--with--the--department--for--the

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

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

15 **Section 11.** Section 76-13-413, MCA, is amended to
 16 read:

17 "76-13-413. Failure to submit withholding -- remedy.
 18 (1) If a purchaser does not submit withheld money and
 19 required reports on or before the 15th day of each the
 20 following month as provided in 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 and reports then due. If he fails to submit
 24 all money due within the required time, the department may
 25 initiate a lien upon the real property of the purchaser and

1 may initiate proceedings to enjoin further processing of all
 2 wood products until all money due is paid in full or
 3 satisfactory arrangements for--payments--are--made and all
 4 required reports are submitted.

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

15 (3) All money withheld by a purchaser for the
 16 contractor's bond and for department fees are considered to
 17 be excise taxes withheld for the benefit of the state within
 18 the meaning of 11 U.S.C. 507."

19 **NEW SECTION. Section 12. Fees.** (1) In addition to any
 20 bond, the department shall charge the contractor fees for
 21 administration, inspections, and enforcement work conducted
 22 in the exercise of its duties under this part. The fees
 23 must be deposited in the state special revenue fund to the
 24 credit of the department.

25 (2) (a) The fee for a fire hazard reduction agreement

1 is \$25 and must be collected by the department upon issuance
2 of the agreement.

3 (b) In addition, a fee of 60 cents for each 1,000
4 board feet (log scale) or equivalent must be charged if
5 products other than logs are cut. This fee must be withheld
6 by the purchaser as provided in 76-13-409(2), except that
7 any fee money withheld for product volumes exceeding 500,000
8 board feet per agreement in a calendar year must be returned
9 to the contractor by the department.

10 (3) Fees for master fire reduction agreements must be
11 equal to 100% of the department's actual costs incurred in
12 the administration, inspection, and enforcement of each
13 agreement, and the department shall bill the contractor
14 annually to collect such fees.

15 NEW SECTION. **Section 13.** Repealer. Section 76-13-404,
16 MCA, is repealed.

17 NEW SECTION. **Section 14.** Extension of authority. Any
18 existing authority to make rules on the subject of the
19 provisions of [this act] is extended to the provisions of
20 [this act].

21 NEW SECTION. **Section 15.** Codification instruction.
22 [Section 12] is intended to be codified as an integral part
23 of Title 76, chapter 13, part 4, and the provisions of Title
24 76, chapter 13, part 4, apply to [section 12].

25 NEW SECTION. **Section 16.** Effective date. [This act]

1 is effective July 1, 1989.

-End-

SENATE STANDING COMMITTEE REPORT

March 16, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 657 (third reading copy -- blue), respectfully report that HB 657 be amended and as so amended be concurred in.

Sponsor: Owens (Keating)

1. Page 13, line 4.
Following: "(log scale)"
Insert: "must be charged,"
Following: "or"
Insert: "an"
Following: "equivalent"
Insert: "fee"

AND AS AMENDED BE CONCURRED IN

Signed: 
Thomas F. Keating, Chairman

HB 657

SENATE

HOUSE BILL NO. 657

INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN

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, 76-13-405 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~~ section 4, of the Montana Constitution.

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

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

~~(2)~~(4) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

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

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, logging, crushing, piling and burning, broadcast burning, burying, or chipping ~~in--order--to--protect--the--hazard-area, adjacent areas, and the property of others from forest fire.~~

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and operators conducting ongoing cutting operations or owners of tracts on which ongoing cutting operations are conducted or planned PERSONS ENGAGED IN CONTINUING CUTTING OPERATIONS OF SUFFICIENT NUMBER AND SIZE TO WARRANT COVERING THESE OPERATIONS UNDER A SINGLE AGREEMENT AND A SINGLE BOND.

1 ~~(3)~~(10) "Person" means an individual, association,
2 partnership, corporation, estate, or any other entity.

3 (11) "Purchaser" means a person who purchases or
4 contracts to purchase any forest products cut from private
5 forest lands within the state. The term includes persons
6 who purchase products manufactured on the cutting area."

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

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

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

18 "76-13-403. Supervision by department. The department,
19 under such rules as adopted by the board ~~adopts~~, may
20 supervise and inspect the fire hazard reduction or
21 management of any all fire hazard hazards created by the
22 ~~cutting-of-any-forest-product~~ forest products harvesting,
23 timber stand improvement, and right-of-way clearing on
24 private land in the state."

25 **Section 4.** Section 76-13-405, MCA, is amended to read:

1 "76-13-405. Contracts with forest protective fire
2 protection agencies. The department is hereby authorized to
3 enter into contracts with forest fire protection protective
4 agencies, including agencies of the United States, for the
5 fire hazard reduction or management of ~~such--fire--hazards~~
6 when in its opinion the work can best be accomplished in
7 that manner."

8 **Section 5.** Section 76-13-406, MCA, is amended to read:

9 "76-13-406. Limitation on liability. The department,
10 ~~state--firewardens,~~ and other recognized forest protective
11 fire protection agencies, including any agency of the United
12 States, with which the department has entered into an
13 agreement for the fire hazard reduction or management of ~~any~~
14 ~~fire--hazard~~ as provided in 76-13-405 and any officer, or
15 official, ~~of--such--agency~~ or employee of the department or
16 other recognized forest fire protection agency shall is not
17 be liable for any damage to the land, product, improvement,
18 or other things of value of ~~whatsoever-nature~~ upon the lands
19 on which the fire hazards are being managed or reduced in
20 accordance with provisions of ~~76-13-402--through--76-13-405~~
21 ~~and---76-13-411{1}~~ this part, the rules adopted under
22 76-13-403, and the fire hazard reduction agreement when all
23 requisite reasonable care and caution has been used and ~~such~~
24 the work is being or has been performed in compliance with
25 the rules provided in 76-13-403."

Section 6. 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~~ excluding 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,

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

Section 7. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond.

(1) Before cutting any forest product, constructing, OR reconstructing, or improving any road in contemplation of cutting any forest product, or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting ~~such--practice~~ the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department ~~and--by posting--a--bond--to--the--state--in--such--form--and--for--such--amount as--may--be--prescribed--by--the--department, conditioned--upon providing for the full~~ and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) Either the person conducting the work or the purchaser as provided in 76-13-409(2) shall post a bond to

the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. In addition, the bond amount may not exceed \$1,000 per cutting unit for timber stand improvement operations in which no saleable product is cut.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

(4) The bond shall be released upon the issuance of the certificate of clearance completion of the work done in compliance with the terms of the agreement."

Section 8. Section 76-13-409, MCA, is amended to read:

"76-13-409. Duty of purchaser to insure ensure compliance -- statement -- bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of

these forest products has provided for the reduction or management of the fire hazard ~~thus created, as provided in this part by entering into a fire hazard reduction agreement as provided in 76-13-408.~~

(2) ~~When the hazard reduction agreement provides that~~ the purchaser of forest products shall withhold moneys sufficient money to meet the requirements of the bond provided for in 76-13-408 ~~to insure faithful compliance with this part, plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement.~~ The purchaser shall transmit all moneys money and fees which that are withheld and a report of volumes of products purchased to the department on or before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld moneys money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

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

(3) If forest products are not received or purchased

1 in a given month, a report showing a zero balance and
 2 stating that products were not purchased must be submitted
 3 to the department.

4 (4) The department may require the purchaser to post a
 5 bond to the state in a form and for an amount as may be
 6 prescribed by the department to ensure faithful compliance
 7 with this part."

8 **Section 9.** Section 76-13-410, MCA, is amended to read:

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

22 (2) If a person fails to comply with 76-13-407 or
 23 76-13-408 ~~and--has-cut-any-forest-products~~ and fails to
 24 comply within 30 days after being notified to do so by the
 25 department, the department may complete, direct, or

1 authorize the ~~disposal-of-the-slash~~ fire hazard reduction or
 2 management at the expense of the contractor or of the owner
 3 of the timber or other forest products cut or produced from
 4 the land upon which the undisposed-of unabated fire hazard
 5 remains.

6 (3) The cost and expense of the disposal fire hazard
 7 reduction or management work, plus 20% of the cost and
 8 expense of the-disposal the work as a penalty, constitutes a
 9 lien upon the forest products so cut or produced from the
 10 land and upon the real and personal property of the
 11 contractor. If payment of the sum demanded is not made to
 12 the department within 10 days of its written demand, the
 13 department shall bring legal action on behalf of the state
 14 to recover the debt."

15 **Section 10.** Section 76-13-411, MCA, is amended to
 16 read:

17 "76-13-411. Certification of clearance. ~~††~~ When the
 18 department makes a determination of faithful compliance by
 19 the contractor with this part, the rules adopted under
 20 76-13-403, and the hazard reduction agreement, the
 21 contractor must be issued a certification of clearance by
 22 the department and be relieved of any further liability or
 23 responsibility for fire hazard reduction or management under
 24 the fire hazard reduction agreement. A--person--who--has
 25 entered--into--a--contract--with--the--department--for--the

reduction--or-management-of-any-fire-hazard,--upon-payment-of
 the-contract-price-in--accordance--with--the--terms--of--the
 contract--and--the--full--compliance--with--the-terms-of-the
 contract-by-the-person,--shall-be-granted-a-certification-of
 clearance-by-the-department-and-be-relieved-of-any--and--all
 further--liability--and--responsibility--for--the-removal-or
 reduction-of-the-fire-hazard,--The--department--may--require
 that--a--cash--bond,--equivalent--to--the-contract-price-and
 conditioned-upon-the-faithful-performance-of--the--contract,
 be-deposited-by-the--person-with-the-department.

(2)--The--department-shall-not-file-for-record-any-lien
 against-the-property-of-any-person-who--has--been--issued--a
 certification--of--compliance--with--76-13-408-and-76-13-409
 covering-the-property."

Section 11. Section 76-13-413, MCA, is amended to
 read:

"76-13-413. Failure to submit withholding -- remedy.

(1) If a purchaser does not submit withheld money and
required reports on or before the 15th day of each the
 following month as provided in when-required-to-do-so--under
 76-13-409, he must be notified by registered-or certified
 mail that he is in noncompliance and be given 15 days to
 submit all money and reports then due. If he fails to submit
 all money due within the required time, the department may
initiate a lien upon the real property of the purchaser and

may initiate proceedings to enjoin further processing of all
 wood products until all money due is paid in full or
 satisfactory-arrangements-for--payments--are--made and all
required reports are submitted.

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

(3) All money withheld by a purchaser for the
 contractor's bond and for department fees are considered to
 be excise taxes withheld for the benefit of the state within
 the meaning of 11 U.S.C. 507."

NEW SECTION. Section 12. Fees. (1) In addition to any
 bond, the department shall charge the contractor fees for
 administration, inspections, and enforcement work conducted
 in the exercise of its duties under this part. The fees
 must be deposited in the state special revenue fund to the
 credit of the department.

(2) (a) The fee for a fire hazard reduction agreement

1 is \$25 and must be collected by the department upon issuance
2 of the agreement.

3 (b) In addition, a fee of 60 cents for each 1,000
4 board feet (log scale) MUST BE CHARGED or AN equivalent FEE
5 must be charged if products other than logs are cut. This
6 fee must be withheld by the purchaser as provided in
7 76-13-409(2), except that any fee money withheld for product
8 volumes exceeding 500,000 board feet per agreement in a
9 calendar year must be returned to the contractor by the
10 department.

11 (3) Fees for master fire reduction agreements must be
12 equal to 100% of the department's actual costs incurred in
13 the administration, inspection, and enforcement of each
14 agreement, and the department shall bill the contractor
15 annually to collect such fees.

16 NEW SECTION. Section 13. Repealer. Section 76-13-404,
17 MCA, is repealed.

18 NEW SECTION. Section 14. Extension of authority. Any
19 existing authority to make rules on the subject of the
20 provisions of [this act] is extended to the provisions of
21 [this act].

22 NEW SECTION. Section 15. Codification instruction.
23 [Section 12] is intended to be codified as an integral part
24 of Title 76, chapter 13, part 4, and the provisions of Title
25 76, chapter 13, part 4, apply to [section 12].

1 NEW SECTION. Section 16. Effective date. [This act]
2 is effective July 1, 1989.

-End-