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

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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.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 1, 1989

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THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

51st Legislature

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INTRODUCED BY Culor Smith Peterson 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 4 LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS; 5 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 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE." 8 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: *76-13-401. Definitions. As used in this part, the 12 13 following definitions apply: 14 (1) "Board" means the board of land commissioners provided for in Article X, sec. section 4, of the Montana 15 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
2 1	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.

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(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: 5 6 "76-13-402. Basis for management of fire hazards. The 7 fire hazard reduction or management of-fire-hazards referred 8 to in this part shall be carried on by the department and 9 the---state---fire---wardens in keeping with modern and 10 progressive forest practices and more effective forest fire 11 control protection and may include but is not limited to the 12 taking of protective measures to prevent injury or the 13 destruction of forest resources without actual abatement of the hazard." 14

15 Section 3. Section 76-13-403, MCA, is amended to read: 16 "76-13-403. Supervision by department. The department, under such rules as adopted by the board adopts, may 17 supervise and inspect the fire hazard reduction or 18 19 management of any all fire hazard hazards created by the cutting-of-any-forest-product forest products harvesting, 20 timber stand improvement, and right-of-way clearing on 21 22 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 <u>fire protection</u> protective agencies, including agencies of the United States, for the <u>fire hazard</u> reduction or management of-such-fire-hazards when in its opinion the work can best be accomplished in that manner."

6 Section 5. Section 76-13-406, MCA, is amended to read: "76-13-406, Limitation on liability. The department, 7 в state--firewardens, and other recognized forest protective 9 fire protection agencies, including any agency of the United 10 States, with which the department has entered into an 11 agreement for the fire hazard reduction or management of-any 12 fire--hazard as provided in 76-13-405 and any officer, or official, of-such-agency or employee of the department or 13 other recognized forest fire protection agency shall is not 14 15 be liable for any damage to the land, product, improvement, or other things of value of-whatsoever-nature upon the lands 16 17 on which the fire hazards are being managed or reduced in 18 accordance with provisions of 76-13-402--through--76-13-405 19 and---76-13-411(1) this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when all 20 21 requisite reasonable care and caution has been used and such 22 the work is being or has been performed in compliance with 23 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

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

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.

(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

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."

Section 7. Section 76-13-408, MCA, is amended to read: 5 "76-13-408. Fire hazard reduction agreement and bond. 6 (1) Before cutting any forest product, constructing, 7 8 reconstructing, or improving any road in contemplation of 9 cutting any forest product, or conducting timber stand improvement such as but not limited to thinning, weeding, or 10 pruning upon private lands within the state, the person 11 conducting such-practice the work shall provide for the 12 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 as-may-be-prescribed-by--the--department, conditioned--upon 17 providing for the full and faithful compliance with all 18 19 requirements under this part and the faithful reduction or 20 management of the fire hazard in the manner prescribed by law and by rules adopted by the board. 21 (2) Either the person conducting the work or the 22

- 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

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	1,000 board feet (log scale) or the equivalent if forest
2	products other than logs are cut. In addition, the bond
3	amount may not exceed \$1,000 per cutting unit for timber
4	stand improvement operations in which no saleable product is
5	cut.
6	(3) The agreement must provide that:
7	(a) all fire hazard reduction or management work
8	comprising nonburning methods and preparations for burning
9	must be completed within 18 months of commencement of
10	cutting in the area covered by the agreement; and
11	(b) all burning work must be completed as specified in
12	the agreement and in compliance with rules adopted by the
13	board.
14	<pre>(2)(4) The bond shall must be released upon the</pre>
15	issuance of the certificate of clearance completionofthe
15 16	
	issuance of the certificate of clearance completionofthe
16	issuance of the certificate of clearance completion-of-the work-done-in-compliance-with-the-terms-of-the-agreement."
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1 this-part by entering into a fire hazard reduction agreement 2 as provided in 76-13-408. (2) When--the--hazard-reduction-agreement-provides-that 3 the The purchaser of-forest-products shall withhold moneys 4 sufficient money to meet the requirements of the bond 5 6 provided for in 76-13-408 to-insure-faithful-compliance-with this-part; plus the fees for administration, inspection, and 7 enforcement by the department as provided in the hazard 8 reduction agreement. the The purchaser shall transmit all 9 10 moneys money and fees which that are withheld and a report 11 of volumes of products purchased to the department on or 12 before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to 13 which the withheld moneys money, fees, and product volumes 14 15 pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by 16 17 the department at any reasonable time. 18 (3)---Upon--the--department-making-the-determination-that 19 faithful-compliance-with-this-part-has--been--achieved---the 20 department--shall--return--to--the--owner--thereof--all-such

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21 withheld-money-with-the--exception--of--4%--for--inspection7

22 administration;-enforcement;-and-smoke-management;

23 (3) If forest products are not received or purchased in

- 24 a given month, a report showing a zero balance and stating
- 25 that products were not purchased must be submitted to the

l department.

2 (4) The department may require the purchaser to post a 3 bond to the state in a form and for an amount as may be 4 prescribed by the department to ensure faithful compliance 5 with this part."

6 Section 9. 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 reduce or manage the fire 9 hazard dispose-of-slash in accordance with the requirements 10 of 76-13-407 and 76-13-408 and-is-engaged--or--is--about--to 11 engage7-either-for-himself-or-for-another7-in-cutting-timber 12 or--other-forest-products-and-thereby-creates-a-fire-hazard, he may be enjoined from further cutting, clearing, and 13 14 construction timber--harvesting operations until 76-13-407 15 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary 16 restraining order, injunction, or writ of mandate. The 17 18 proceedings shall be conducted in the district court of the county where the land is located. 19

(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.

4 (3) The cost and expense of the disposal fire hazard reduction or management work, plus 20% of the cost and 5 6 expense of the-disposal the work as a penalty, constitutes a 7 lien upon the forest products so cut or produced from the 8 land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to 9 the department within 10 days of its written demand, the 10 11 department shall bring legal action on behalf of the state 12 to recover the debt."

13	Section 10. Section 76-13-411, MCA, is amended to read:
14	"76-13-411. Certification of clearance. (1) <u>When the</u>
15	department makes a determination of faithful compliance by
16	the contractor with this part, the rules adopted under
17	76-13-403, and the hazard reduction agreement, the
18	contractor must be issued a certification of clearance by
19	the department and be relieved of any further liability or
20	responsibility for fire hazard reduction or management under
21	the fire hazard reduction agreement. Apersonwhohas
22	enteredintoacontractwiththedepartmentforthe
23	reduction-or-management-of-any-fire-hazard7-upon-paymentof
24	thecontractpriceinaccordancewiththe-terms-of-the
25	contract-and-the-fullcompliancewiththetermsofthe

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1 contract-by-the-person7--shall-be-granted-a-certification-of 2 clearance--by--the-department-and-be-relieved-of-any-and-all 3 further-liability-and--responsibility--for--the--removal--or 4 reduction--of--the--fire--hazardr-The-department-may-require 5 that-a-cash-bond7--equivalent--to--the--contract--price--and 6 conditioned--upon--the-faithful-performance-of-the-contract7 7 be-deposited-by-the--person-with-the-department7

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

Section 11. Section 76-13-413, MCA, is amended to read: 12 13 "76-13-413. Failure to submit withholding -- remedy. 14 (1) If a purchaser does not submit withheld money and 15 required reports on or before the 15th day of each the 16 following month as provided in when-required-to-do-so--under 17 76-13-409, he must be notified by registered-or certified 18 mail that he is in noncompliance and be given 15 days to 19 submit all money and reports then due. If he fails to submit 20 all money due within the required time, the department may 21 initiate a lien upon the real property of the purchaser and 22 may initiate proceedings to enjoin further processing of all 23 wood products until all money due is paid in full or 24 satisfactory-arrangements-for--payments--are--made and all 25 required reports are submitted.

(2) If payment and reports are not received by the 1 2 department is -- not -- made within the 15-day period after notification as provided in subsection (1), a penalty of 5% 3 of the payment amount due must be assessed. The department 4 may abate the penalty if the purchaser establishes that the 5 6 failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on 7 his part. The department, in addition to the penalty, may 8 9 impose interest at the rate of 10% a year on any balance 10 remaining unpaid. 11 (3) All money withheld by a purchaser for the contractor's bond and for department fees are considered to 12 be excise taxes withheld for the benefit of the state within 13 the meaning of 11 U.S.C. 507." 14 NEW SECTION. Section 12. Fees, (1) In addition to any 15 bond, the department shall charge the contractor fees for 16 administration, inspections, and enforcement work conducted 17 18 in the exercise of its duties under this part. The fees 19 must be deposited in the state special revenue fund to the

20 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 boardfeet (log scale) or equivalent must be charged if products

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

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

13 <u>NEW SECTION.</u> 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].

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

21 <u>NEW SECTION.</u> Section 16. Effective date. [This act] is 22 effective July 1, 1989.

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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.
- Under current law, hazard reduction agreement (HRA) revenue is \$36,000 per annum based on estimated 3. 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).
- Under proposed law, HRA revenue will be \$83,250 per annum based on a projected number of 930 HRAs 4. 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.
- The department will reduce this modification for the 1993 biennium to the extent state special slash 6. disposal revenue is not available to fund continuation.
- There is no fiscal impact on the Dept. of Highways, the Dept. of Fish, Wildlife and Parks, the Dept. 7. 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 FY91 FY90 Dept. of State Lands Current Proposed Current Proposed Difference Difference Revenues: Law Law Law Law State Special Revenue Hazard Reduction Agmts \$ 36,000 \$ 83.250 \$47.250 \$36,000 \$ 83,250 \$47,250 34,911 34,911 -0-30,720 Master HRAs 30,720 -0-State-Do Work 32,000 32,000 -0-32,000 32,000 -0-\$102,911 \$47,250 Total \$150,161 \$98,720 \$145,970 \$47,250

DATE 2/18/89 Kan

BUDGET DIRECTOR RAY SHACKLEFORD. OFF/ICE OF BUDGET AND PROGRAM PLANNING

DATE :

LIJM OWENS, PRIMARY SPONSOR

Fiscal Note for HB657 , as introduced

HR 657

51st Legislature

HB 0657/02

APPROVED BY COMM. ON Natural resources

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

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3	
	right-of-way clearing operations that produce a cover of
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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-conductedor
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.

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HB 657

SECOND READING

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."

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HB 657

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

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

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."

7 Section 7. Section 76-13-408, MCA, is amended to read: 8 "76-13-408. Fire hazard reduction agreement and bond. 9 (1) Before cutting any forest product, constructing, OR 10 reconstructing,-or-improving any road in contemplation of 11 cutting any forest product, or conducting timber stand improvement such as but not limited to thinning, weeding, or 12 13 pruning upon private lands within the state, the person conducting such--practice the work shall provide for the 14 reduction or management of the fire hazard to be created by 15 16 entering into a fire hazard reduction agreement or a master 17 fire hazard reduction agreement with the department and--by 18 posting-a-bond-to-the-state-in-such-form-and-for-such-amount as--may--be--prescribed--by-the-department, conditioned-upon 19 20 providing for the full and faithful compliance with all 21 requirements under this part and the faithful reduction or 22 management of the fire hazard in the manner prescribed by 23 law and by rules adopted by the board.

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

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1 the state in a form and for an amount as may be prescribed 2 by the department, but the amount may not exceed \$6 for each 3 1,000 board feet (log scale) or the equivalent if forest 4 products other than logs are cut. In-additiony-the-bond 5 amount-may-not-exceed-\$1,000-per--cutting--unit--for--timber 6 stand-improvement-operations-in-which-no-saleable-product-is 7 eut-8 (3) The agreement must provide that: 9 (a) all fire hazard reduction or management work 10 comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of 11 12 cutting in the area covered by the agreement: and 13 (b) all burning work must be completed as specified in 14 the agreement and in compliance with rules adopted by the 15 board. 16 (2)(4) The bond shall must be released upon the 17 issuance of the certificate of clearance completion--of--the work-done-in-compliance-with-the-terms-of-the-agreement." 18 19 Section 8. Section 76-13-409, MCA, is amended to read: 20 "76-13-409. Duty of purchaser to insure ensure 21 compliance -- statement -- bond. (1) The initial purchaser 22 of forest products which have been cut or are about to be 23 cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that 24 25 the person engaged or about to engage in the cutting of

1 these forest products has provided for the reduction or management of the fire hazard thus-createdy-as-provided-in 2 3 this-part by entering into a fire hazard reduction agreement 4 as provided in 76-13-408. 5 (2) When-the-hazard-reduction-agreement-provides--that the The purchaser of-forest-products shall withhold moneys 6 sufficient money to meet the requirements of the bond 7 8 provided for in 76-13-408 to-insure-faithful-compliance-with 9 this-part; plus the fees for administration, inspection, and 10 enforcement by the department as provided in the hazard reduction agreement. the The purchaser shall transmit all 11 12 moneys money and fees which that are withheld and a report 13 of volumes of products purchased to the department on or before the 15th day of each the following month, clearly 14 identifying by number the fire hazard reduction agreement to 15 which the withheld moneys money, fees, and product volumes 16 pertain. The purchaser shall keep accurate records of the 17 purchase and the amounts withheld, which may be inspected by 18 19 the 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--ef-4%-for-inspection; administration;-enforcement;-and-smoke-management; 24

(3) If forest products are not received or purchased

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in a given month, a report showing a zero balance and 1 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 bond to the state in a form and for an amount as may be 5 6 prescribed by the department to ensure faithful compliance 7 with this part." Section 9. Section 76-13-410, MCA, is amended to read: 8 "76-13-410. Failure to comply. (1) If a person fails, 9 refuses, or neglects to properly reduce or manage the fire 10 11 hazard dispose-of-slash in accordance with the requirements of 76-13-407 and 76-13-408 and-is-engaged-or-is--about--to 12 engage--either-for-himself-or-for-another--in-cutting-timber 13 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 and 76-13-408 have been complied with. The department may 17 initiate the proceedings and may obtain a temporary 18 19 restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the 20 21 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

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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.

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:

"76-13-411. Certification of clearance. (1) When the 17 18 department makes a determination of faithful compliance by 19 the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the 20 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 contract-and-the--full--compliance--with--the-terms-of-the 3 4 contract-by-the-person,--shall-be-granted-a-certification-of 5 clearance-by-thc-department-and-be-relieved-of-any--and--a++ 6 further--liability--and--responsibility--for--the-removal-or 7 reduction-of-the-fire-hazard; -- The--department--may--require 8 that--a--cash--bondy--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:

"76-13-413. Failure to submit withholding -- remedy. 17 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 76-13-409, he must be notified by registered-or certified 21 mail that he is in noncompliance and be given 15 days to 22 23 submit all money and reports then due. If he fails to submit all money due within the required time, the department may 24 initiate a lien upon the real property of the purchaser and 25

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.

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

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

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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 <u>NEW SECTION.</u> Section 13. Repealer. Section 76-13-404,
16 MCA, is repealed.

17 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> 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]

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1 is effective July 1, 1989.

-End-

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1	HOUSE BILL NO. 657	1	(5) "Fire hazard" means slash and debris resulting
2	INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN	2	from timber cutting, timber stand improvement, or
3		3	right-of-way clearing operations that produce a cover of
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	4	flammable material in which fire could spread through a
5	LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS;	5	cutting or adjacent area.
6	AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-405	6	(6) "Fire hazard reduction agreement" means a contract
7	THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION	7	made to ensure compliance with this part and with the rules
8	76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."	8	adopted under 76-13-403 for fire hazard reduction or
9		9	management.
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10	(7) "Fire hazard reduction or management" means the
11	Section 1. Section 76-13-401, MCA, is amended to read:	11	abatement of a fire hazard by methods that include but are
12	"76-13-401. Definitions. As used in this part, the	12	not limited to separation, removal, scattering, lopping,
13	following definitions apply:	13	crushing, piling and burning, broadcast burning, burying, or
14	(1) "Board" means the board of land commissioners	14	chipping in-ordertoprotectthehazard-area;-adjacent
15	provided for in Article X, sec. section 4, of the Montana	15	areas,-and-the-property-of-others-from-forest-fire.
16	Constitution.	16	(8) "Forest product" means trees or their component
17	(2) "Certification of clearance" means a certification	17	parts, including but not limited to logs, poles, branches,
18	issued by the department acknowledging that the fire hazard	18	or bark.
19	has been reduced or managed in accordance with this part and	19	(9) "Master fire hazard reduction agreement" means a
20	the fire hazard reduction agreement or agreements.	20	fire hazard reduction agreement between the department and
21	(3) "Contractor" means the person who executes the	21	operators-conducting-ongoing-cutting-operations-or-owners-of
22	fire hazard reduction agreement and is responsible to	22	tracts-on-which-ongoing-cutting-operations-are-conductedor
23	fulfill the obligations established by the agreement.	23	planned PERSONS ENGAGED IN CONTINUING CUTTING OPERATIONS OF
24	+2+(4) "Department" means the department of state	24	SUFFICIENT NUMBER AND SIZE TO WARRANT COVERING THESE
25	lands provided for in Title 2, chapter 15, part 32.	25	OPERATIONS UNDER A SINGLE AGREEMENT AND A SINGLE BOND.

Monçana Legislative Council

HB 657

THIRD READING

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t3t(10) "Person" means an individual, association.
 partnership, corporation, estate, or any other entity.
 (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: *76-13-402. Basis for management of fire hazards. The 8 9 fire hazard reduction or management of fire-hazards referred to in this part shall be carried on by the department and 10 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 taking of protective measures to prevent injury or the 14 destruction of forest resources without actual abatement of 15 the hazard." 16

17 Section 3. Section 76-13-403, MCA, is amended to read: "76-13-403. Supervision by department. The department, 18 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, timber stand improvement, and right-of-way clearing on 23 24 private land in the state."

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

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1 **"76-13-405. Contracts with forest protective** <u>fire</u> 2 <u>protection</u> agencies. The department is hereby authorized to 3 enter into contracts with forest <u>fire protection</u> protective 4 agencies, including agencies of the United States, for the 5 <u>fire hazard</u> 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; state--firewardens, and other recognized forest protective 1.0 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 fire--hazard as provided in 76-13-405 and any officer, or 14 15 official, of-such-agency or employee of the department or other recognized forest fire protection agency shall is not 16 be liable for any damage to the land, product, improvement, 17 18 or other things of value of-whatsoever-nature upon the lands on which the fire hazards are being managed or reduced in 19 20 accordance with provisions of 76-13-402--through--76-13-405 and---76-13-411(1) this part, the rules adopted under 21 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 the rules provided in 76-13-403," 25

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

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

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

7 Section 7. Section 76-13-408, MCA, is amended to read: 8 "76-13-408. Fire hazard reduction agreement and bond. 9 (1) Before cutting any forest product, constructing; OR reconstructing,-or-improving any road in contemplation of 10 11 cutting any forest product, or conducting timber stand improvement such as but not limited to thinning, weeding, or 12 pruning upon private lands within the state, the person 13 14 conducting such--practice the work shall provide for the 15 reduction or management of the fire hazard to be created by 16 entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department and--by 17 18 posting-a-bond-to-the-state-in-such-form-and-for-such-amount 19 as--may--be--prescribed--by-the-department, conditioned-upon 20 providing for the full and faithful compliance with all 21 requirements under this part and the faithful reduction or 22 management of the fire hazard in the manner prescribed by 23 law and by rules adopted by the board. (2) Either the person conducting the work or the 24

25 purchaser as provided in 76-13-402(2) shall post a bond to

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1 the state in a form and for an amount as may be prescribed 2 by the department, but the amount may not exceed \$6 for each 3 1,000 board feet (log scale) or the equivalent if forest 4 products other than logs are cut. In-additiong-the-bond 5 amount-may-not-exceed-\$1;000-per--cutting--unit--for--timber 6 stand-improvement-operations-in-which-no-saleable-product-is 7 eut-8 (3) The agreement must provide that: 9 (a) all fire hazard reduction or management work 10 comprising nonburning methods and preparations for burning 11 must be completed within 18 months of commencement of 12 cutting in the area covered by the agreement; and 13 (b) all burning work must be completed as specified in 14 the agreement and in compliance with rules adopted by the 15 board. 16 (2)(4) The bond shall must be released upon the 17 issuance of the certificate of clearance completion--of--the 18 work-done-in-compliance-with-the-terms-of-the-agreement." 19 Section 8. Section 76-13-409, MCA, is amended to read: 20 *76-13-409. Duty of purchaser to insure ensure 21 compliance -- statement -- bond. (1) The initial purchaser 22 of forest products which have been cut or are about to be 23 cut from any private lands within the state shall, before 24 making the purchase or contract to purchase, determine that 25 the person engaged or about to engage in the cutting of

these forest products has provided for the reduction or 1 2 management of the fire hazard thus-crested,-as-provided-in 3 this-part by entering into a fire hazard reduction agreement as provided in 76-13-408. Δ 5 (2) When-the-hazard-reduction-agreement-provides--that 6 the The purchaser of-forest-products shall withhold moneys 7 sufficient money to meet the requirements of the bond 8 provided for in 76-13-408 to-insure-faithful-compliance-with 9 this-part, plus the fees for administration, inspection, and enforcement by the department as provided in the hazard 10 11 reduction agreement. the The purchaser shall transmit all 12 moneys money and fees which that are withheld and a report 13 of volumes of products purchased to the department on or 14 before the 15th day of each the following month, clearly identifying by number the fire hazard reduction agreement to 15 which the withheld moneys money, fees, and product volumes 16 17 pertain. The purchaser shall keep accurate records of the 18 purchase and the amounts withheld, which may be inspected by the department at any reasonable time. 19 20 f3)--Upon-the-department-making-the-determination--that 21 faithful--compliance--with--this-part has-been-achieved;-the department-shall--return--to--the--owner--thereof--all--such 22 withheld-money--with--the--exception --of-4%-for-inspection; 23 administration--enforcement--and-smoke-management-24 (3) If forest products are not received or purchased 25

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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 with this part." 7

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

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

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read: *76-13-411. Certification of clearance. (1) When the

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department makes a determination of faithful compliance by 18 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 the fire hazard reduction agreement. A--person--who-has 24 25 entered--into--a--contract--with--the--department--for---the

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1 authorize the disposal-of-the-slash fire hazard reduction or 2 management at the expense of the contractor of 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 remains. 5

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 land and upon the real and personal property of the 10 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 to recover the debt." 14

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

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11 (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-7"

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 following month as provided in when-required-to-do-so--under 2.0 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 all money due within the required time, the department may 2.4 25 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.

5 (2) If payment and reports are not received by the 6 department is--mot--made within the 15-day period after 7 notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department 8 9 may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required 10 was due to reasonable cause and was not due to neglect on 11 1.2 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. (3) All money withheld by a purchaser for the 15

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 <u>NEW SECTION.</u> 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.

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

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

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

17 <u>NEW SECTION.</u> 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].

<u>NEW SECTION.</u> Section 15. Codification instruction.
[Section 12] is intended to be codified as an integral part
of Title 76, chapter 13, part 4, and the provisions of Title
76, chapter 13, part 4, apply to [section 12].

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

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1 is effective July 1, 1989.

-End-

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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. Chairman

HB 657

SENATE

14

HB 0657/03

HB 0657/03

1	HOUSE BILL NO. 657	1	(5) "Fire hazard" means slash and debris resulting
2	INTRODUCED BY OWENS, SMITH, PETERSON, AAFEDT, WHALEN	2	from timber cutting, timber stand improvement, or
3		3	right-of-way clearing operations that produce a cover of
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	4	flammable material in which fire could spread through a
5	LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS;	5	cutting or adjacent area.
6	AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-405	6	(6) "Fire hazard reduction agreement" means a contract
7	THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION	7	made to ensure compliance with this part and with the rules
8	76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."	8	adopted under 76-13-403 for fire hazard reduction or
9		9	management.
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10	(7) "Fire hazard reduction or management" means the
11	Section 1. Section 76-13-401, MCA, is amended to read:	11	abatement of a fire hazard by methods that include but are
12	*76-13-401. Definitions. As used in this part, the	12	not limited to separation, removal, scattering, lopping,
13	following definitions apply:	13	crushing, piling and burning, broadcast burning, burying, or
14	(1) "Board" means the board of land commissioners	14	chipping inordertoprotectthehazard-area;-adjacent
15	provided for in Article X, sec. section 4, of the Montana	15	areasy-and-the-property-of-others-from-forest-fire.
16	Constitution.	16	(8) "Forest product" means trees or their component
17	(2) "Certification of clearance" means a certification	17	parts, including but not limited to logs, poles, branches,
18	issued by the department acknowledging that the fire hazard	18	or bark.
19	has been reduced or managed in accordance with this part and	19	(9) "Master fire hazard reduction agreement" means a
20	the fire hazard reduction agreement or agreements.	20	fire hazard reduction agreement between the department and
21	(3) "Contractor" means the person who executes the	21	operators-conducting-ongoing-cutting-operations-or-owners-of
22	fire hazard reduction agreement and is responsible to	22	tracts-on-which-ongoing-cutting-operations-are-conductedor
23	fulfill the obligations established by the agreement.	23	planned PERSONS ENGAGED IN CONTINUING CUTTING OPERATIONS OF
24	(2) (4) "Department" means the department of state	24	SUFFICIENT NUMBER AND SIZE TO WARRANT COVERING THESE
25	lands provided for in Title 2, chapter 15, part 32.	25	OPERATIONS UNDER A SINGLE AGREEMENT AND A SINGLE BOND.

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(3)(10) "Person" means an individual, association,
 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: *76-13-402. Basis for management of fire hazards. The 8 9 fire hazard reduction or management of-fire-hazards referred to in this part shall be carried on by the department and 10 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, under such rules as adopted by the board adopts, may 19 supervise and inspect the fire hazard reduction or 20 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 <u>fire</u> 2 <u>protection</u> agencies. The department is hereby authorized to 3 enter into contracts with forest <u>fire protection</u> protective 4 agencies, including agencies of the United States, for the 5 <u>fire hazard</u> 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, or other things of value of-whatsoever-nature upon the lands 18 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 76-13-403, and the fire hazard reduction agreement when all 22 23 requisite reasonable care and caution has been used and such 24 the work is being or has been performed in compliance with the rules provided in 76-13-403." 25

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Section 6. Section 76-13-407, MCA, is amended to read: 1 2 "76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any 3 railroad, public highway, public trail, private road, trail, ۵ ditch, dike, pipeline or wire lines, or any other 5 transmission or transportation utility right-of-way, except б 7 temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, 8 9 shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public 10 or private utility unless exempted by the department. At 11 least 10 days before commencement of the clearing, the 12 person conducting the clearing shall notify the department 13 of commencement of the clearing in the form and manner the 14 15 department provides.

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

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

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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."

7 Section 7. Section 76-13-408, MCA, is amended to read: "76-13-408. Fire hazard reduction agreement and bond. R 9 (1) Before cutting any forest product, constructing; OR 10 reconstructing, or improving any road in contemplation of cutting any forest product, or conducting timber stand 11 12 improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person 13 conducting such--practice the work shall provide for the 14 reduction or management of the fire hazard to be created by 15 entering into a fire hazard reduction agreement or a master 16 17 fire hazard reduction agreement with the department and--by posting-a-bond-to-the-state-in-such-form-and-for-such-amount 18 19 as--may--be--prescribed--by-the-department, conditioned-upon providing for the full and faithful compliance with all 20 requirements under this part and the faithful reduction or 21 22 management of the fire hazard in the manner prescribed by 23 law and by rules adopted by the board.

24(2) Either the person conducting the work or the25purchaser as provided in 76-13-409(2) shall post a bond to

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1	the state in a form and for an amount as may be prescribed
2	by the department, but the amount may not exceed \$6 for each
3	1,000 board feet (log scale) or the equivalent if forest
4	products other than logs are cut. In-addition;-the-bond
5	amount-may-not-exceed-\$1,000-percuttingunitfortimber
6	stand-improvement-operations-in-which-no-saleable-product-is
7	<u>cut</u> .
8	(3) The agreement must provide that:
9	(a) all fire hazard reduction or management work
10	comprising nonburning methods and preparations for burning
11	must be completed within 18 months of commencement of
12	cutting in the area covered by the agreement; and
13	(b) all burning work must be completed as specified in
14	the agreement and in compliance with rules adopted by the
15	board.
16	<pre>f2;(4) The bond shall must be released upon the</pre>
17	issuance of the certificate of clearance completionofthe
18	work-done-in-compliance-with-the-terms-of-the-agreement."
19	Section 8. Section 76-F3-409, MCA, is amended to read:
20	*76-13-409. Duty of purchaser to insure ensure
21	compliance statement bond. (1) The initial purchaser
22	of forest products which have been cut or are about to be
23	cut from any private lands within the state shall, before
24	making the purchase or contract to purchase, determine that
25	the person engaged or about to engage in the cutting of

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1	these forest products has provided for the reduction or
2	management of the fire hazard thus-created, as provided in
3	this-part by entering into a fire hazard reduction agreement
4	as provided in 76-13-408.
5	(2) When-the-hazard-reduction-agreement-providesthat
6	the The purchaser of-forest-products shall withhold moneys
7	sufficient money to meet the requirements of the bond
8	provided for in 76-13-408 to-insure-faithful-compliance-with
9	this-part, plus the fees for administration, inspection, and
10	enforcement by the department as provided in the hazard
11	reduction agreement. the The purchaser shall transmit all
12	moneys money and fees which that are withheld and a report
13	of volumes of products purchased to the department on or
14	before the 15th day of each the following month, clearly
15	identifying by number the fire hazard reduction agreement to
16	which the withheld moneys money, fees, and product volumes
17	pertain. The purchaser shall keep accurate records of the
18	purchase and the amounts withheld, which may be inspected by
19	the department at any reasonable time.
20	(3) Upon-the-department-making-the-determinationthat
21	faithfulcompliancewiththis-part-has-been-achieved7-the
22	department-shallreturntotheownerthereofallsuch
23	withheldmoneywiththeexceptionof-4%-for-inspection;
24	administration;-enforcement;-and-smoke-management;
25	(3) If forest products are not received or purchased

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1 in a given month, a geport showing a zero balance and 2 stating that products were not purchased must be submitted 3 to the department. (4) The department may require the purchaser to post a 4 bond to the state in a form and for an amount as may be 5 prescribed by the department to ensure faithful compliance 6 with this part." 7 Section 9. Section 76-13-410, MCA, is amended to read: 8 "76-13-410. Failure to comply. (1) If a person fails, 9 refuses, or neglects to properly reduce or manage the fire 10 11 hazard dispose-of-slash in accordance with the requirements of 76-13-407 and 76-13-408 and-is-engaged--or--is--about--to 12 13 engagez-either-for-himself-or-for-another--in-cutting-timber or--other-forest-products-and-thereby-creates-a-fire-hazard, 14 15 he may be enjoined from further cutting, clearing, and 16 construction timber--harvesting operations until 76-13-407 and 76-13-408 have been complied with. The department may 17 18 initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The 19 proceedings shall be conducted in the district court of the 20 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 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.

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 If payment of the sum demanded is not made to 11 contractor. 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. (1) When the 18 department makes a determination of faithful compliance by 19 the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the 20 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

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reduction--or-management-of-any-fire-hazardy-upon-payment-of 1 the-contract-price-in--accordance--with--the--terms--of--the 2 contract--and--the--full--compliance--with--the-terms-of-the 3 contract-by-the-person;--shall-be-granted-a-certification-of 4 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--76-13-400-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. (1) If a purchaser does not submit withheld money and 18 19 required reports on or before the 15th day of each the following month as provided in when-required-to-do-so--under 20 76-13-409, he must be notified by registered-or certified 21 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.

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

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.

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

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

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

16 <u>NEW SECTION.</u> Section 13. Repealer. Section 76-13-404,
17 MCA, is repealed.

18 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> 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]. HB 0657/03

1 NEW SECTION. Section 16. Effective date. [This act]

2 is effective July 1, 1989.

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